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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 34

WILLIAM DOUGLAS AND BENNIE WILL MEYES,
PETITIONERS,

VS.

CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF CALIFORNIA

FILED APRIL 6, 1961

CERTIORARI GRANTED OCTOBER 9, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 411 34

WILLIAM DOUGLAS AND BENNIE WILL MEYES,
PETITIONERS.

vs.

CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF CALIFORNIA

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**IN THE SUPERIOR COURT OF THE STATE OF CALI
FORNIA IN AND FOR THE COUNTY OF LOS ANGELES**

No. 218196

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

WILLIAM DOUGLAS AND BENNIE WILL MEYES, Defendants.

Clerk's Transcript

[Ed. 1] IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

S. C. No. 218196

D. A. No. 266896

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

WILLIAM DOUGLAS AND BENNIE WILL MEYES, Defendants.

INFORMATION ROBBERY (Sec. 211 P.C.) (Cts. I, II, III, IV,
V, VI, VIII, IX, X, and XII) ASSAULT WITH INTENT
TO COMMIT MURDER (217 P.C.) (Ct. VII) ADW (Sec. 214
P.C.) (Cts. XI and XII) 3 Pages As to MEYES.

Count I

The said William Douglas and Bennie Will Meyes are
accused by the District Attorney of and for the County of
Los Angeles, State of California, by this information, of
the crime of Robbery, in violation of Section 211, Penal Code
of California; a felony, committed as follows: That the said
William Douglas and Bennie Will Meyes, on or about the

2
10th day of October 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously and by means of force and fear take from the person, possession and immediate presence of Fanny Tubbs, the following described personal property, to wit:

One Hundred Twenty and 00/100 Dollars (\$120.00), in money, lawful money of the United States.

[fol. 2]

Count II

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charge set forth in Count I hereof, the said William Douglas and Bennie Will Meyers, are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Robbery, in violation of Section 211, Penal Code, a felony, committed as follows: That the said William Douglas and Bennie Will Meyes, on or about the 10th day of October 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously and by means of force and fear take from the person, possession and immediate presence of Mathe Smith, the following described personal property, to wit:

Eighty and No/100 Dollars (\$80.00), in money, lawful money of the United States.

[fol. 3]

Count III

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in all the preceding counts hereof, the said William Douglas and Bennie Will Meyes, are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Robbery, in violation of Section 211, Penal Code, a felony, committed as follows: That the said William Douglas and Bennie Will Meyes, on or about the 10th day of October 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously and by means of force and fear take from the person, possession

and immediate presence of M. C. Smith, the following described personal property, to wit:

One Hundred Forty and No 100 Dollars (\$140.00), in money, lawful money of the United States.

[161. 4]

Count IV

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in all the preceding counts heretofore, the said William Douglas and Bennie Will Meyes, are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Robbery, in violation of Section 211, Penal Code, a felony, committed as follows: That the said William Douglas and Bennie Will Meyes, on or about the 24th day of September 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously and by means of force and fear take from the person, possession and immediate presence of Janie May Booker, the following described personal property, to wit:

In Excess of One Hundred Forty and No 100 Dollars (\$140.00), in money, lawful money of the United States.

[161. 5]

Count V

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in all the preceding counts heretofore, the said William Douglas and Bennie Will Meyes, are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Robbery, in violation of Section 211, Penal Code, a felony, committed as follows: That the said William Douglas and Bennie Will Meyes, on or about the 16th day of August 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously and by means of force and fear take from the person, possession and immediate presence of Frank Stevenson, the following described personal property, to wit:

One Hundred Thirty and No 100 Dollars (\$130.00), in money, lawful money of the United States.

[fol. 6]

Count VI

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in all the preceding counts hereof, the said William Douglas and Bennie Will Meyes, are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Robbery, in violation of Section 211, Penal Code, a felony, committed as follows: That the said William Douglas and Bennie Will Meyes, on or about the 25th day of July 1958, at and in the County of Los Angeles State of California, did willfully, unlawfully, feloniously and by means of force and fear take from the person, possession and immediate presence of Henry Carroll, the following described personal property, to wit: a wallet and contents of the value of:

In Excess of Eighty Seven and No 100 Dollars (\$87.00); lawful money of the United States.

[fol. 7]

Count VII

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in all the preceding counts hereof, the said William Douglas and Bennie Will Meyes, are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Assault with Intent to Commit Murder, in violation of Section 217, Penal Code of California, a felony, committed as follows: That the said William Douglas and Bennie Will Meyes, on or about 25th day of July 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously, and with malice aforethought, assault Henry Carroll, a human being, with intent to commit murder.

[fol. 8]

Count VIII

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in all the preceding counts hereof, the said William Douglas and Bennie Will Meyes, are accused by the District Attorney of and for the County of

Los Angeles, State of California, by this information, of the crime of Robbery, in violation of Section 211, Penal Code, a felony, committed as follows: That the said William Douglas and Bennie Will Meyes, on or about the 25th day of July 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously and by means of force and fear take from the person, possession and immediate presence of Aaron Hatch, the following described personal property, to wit: a wallet and contents of the value of Two and No 100 (\$2.00) and Five and No 100 Dollars (\$5.00), in money, lawful money of the United States, all of the value of:

Seven and No 100 Dollars (\$7.00), lawful money of the United States.

[Fol. 9] Count IX

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in all the preceding counts hereof, the said William Douglas and Bennie Will Meyes, are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Robbery, in violation of Section 211, Penal Code, a felony, committed as follows: That the said William Douglas and Bennie Will Meyes, on or about the 21st day of July 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously and by means of force and fear take from the person, possession and immediate presence of Moses Forrest, the following described personal property, to wit:

In Excess of One Hundred Fifteen and No 100 Dollars (\$115.00), in money, lawful money of the United States.

[Fol. 10] Count X

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in all the preceding counts hereof, the said William Douglas and Bennie Will Meyes, are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Robbery, in violation of Section 211, Penal

Code, a felony, committed as follows: That the said William Douglas and Bennie Will Meyes, on or about the 21st day of July 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously and by means of force and fear take from the person, possession and immediate presence of Jim Dunlop, the following described personal property, to wit: a wallet and contents of the value of:

Ten and No 100 Dollars (\$10.00), lawful money of the United States.

[fol. 11]

Count XI

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in all the preceding counts hereof, the said William Douglas and Bennie Will Meyes, are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Assault With a Deadly Weapon, in violation of Section 245, Penal Code of California, a felony, committed as follows: That the said William Douglas and Bennie Will Meyes, on or about the 21st day of July 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously commit an assault with a deadly weapon upon Jim Dunlop, a human being.

[fol. 12]

Count XII

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in all the preceding counts hereof, the said William Douglas and Bennie Will Meyes, are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Assault With a Deadly Weapon, in violation of Section 245, Penal Code of California, a felony, committed as follows: That the said William Douglas and Bennie Will Meyes, on or about the 10th day of October 1958 at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously commit an assault with a deadly weapon upon Mathe Smith, a human being.

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in all the preceding counts hereof, the said William Douglas and Bennie Will Meyes, are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Robbery, in violation of Section 211, Penal Code, a felony, committed as follows: That the said William Douglas and Bennie Will Meyes, on or about the 29th day of June 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously and by means of force and fear take from the person, possession and immediate presence of Janie Mae Booker the following described personal property, to wit: personal property and money.

In Excess of One Hundred and No 100 Dollars (\$100.00), lawful money of the United States.

That before the commission of the offenses hereinbefore set forth in this information, said defendant, Bennie Will Meyes, was in the Superior Court of the State of California, in and for the County of Los Angeles, convicted of the crime of Burglary, a felony, and the judgment of said court against said defendant in said connection was on or about the 23rd day of January 1948, pronounced and rendered and said defendant served a term of imprisonment therefor in the State Prison.

That before the commission of the offenses hereinbefore set forth in this information, said defendant, Bennie Will Meyes, was in the Superior Court of the State of California, in and for the County of Los Angeles, convicted of the crime of Robbery, a felony, and the judgment of said court against said defendant in said connection was on or about the 30th day of November 1950, pronounced and rendered and said defendant served a term of imprisonment therefor in the State Prison.

[fol. 14] That before the commission of the offenses hereinbefore set forth in this information, said defendant, Bennie Will Meyes, was in the Superior Court of the State of California, in and for the County of Los Angeles, convicted of the crime of Robbery, a felony, and the judgment of said court against said defendant in said connection was

on or about the 12th day of January 1951, pronounced and rendered and said defendant served a term of imprisonment therefor in the State Prison.

The former convictions herein alleged against said defendant, Bennie Will Meyes, are hereby charged against him with respect to each of the counts, hereinbefore set forth and by reference the same are hereby made a part of each of said counts.

Filed in open Superior Court of the State of California, County of Los Angeles, on motion of the District Attorney of said County. Dated: August 11, 1959. Harold J. Ostly, Clerk, By H. H. Baruch, Deputy.

William B. McKesson, District Attorney for the County of Los Angeles, State of California, By William H. Gustafson, Deputy.

had

[Vol. 15] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

MINUTES OF ARRANGMENT—August 18, 1959

Department No. 100

Present Hon. Herbert A. Walker, Judge

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

In each of the following cases: Deputy District Attorney Kenneth J. Thomas and the Defendant, present. The Public Defender is appointed by the Court as counsel for each defendant. Each defendant is arraigned and plea is continued to date shown at 9 A.M.

	Defendant	Date of Trial	Remanded
218078	Henry Wolf	August 21, 1959	Yes
218183	Rose Paghet	August 21, 1959	Bad
218181	George Allen Clarke	August 21, 1959	Yes
218187	Jack Boykin	August 21, 1959	Yes
218189	Jess Hernandez	August 21, 1959	Yes
218196	William Douglas and Bonnie Wul Meyes	August 21, 1959	Yes
218230	Donald Eugene O'Neal	August 21, 1959	Yes
218231	John Rocha Cabrera	August 21, 1959	Yes
218233	Wayne Floyd Dahl	August 21, 1959	Yes
218234	Orlando Chavez Chavez	August 21, 1959	Yes
218235	Alfred Wayne Stricker	August 21, 1959	Yes
218237	Fredrick Rudolph Añsquez	August 21, 1959	Yes
218244	Robert Clarence Rupert	August 21, 1959	Yes
218281	Leon Watkins	August 21, 1959	Yes
218338	Gilbert Matthew Deminger and Richard Earl Gardiner	August 21, 1959	Yes
218421	Philip Eugene Lord and Homer Ray Brynn	August 21, 1959	Yes

[Vol. 16] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Department No. 100

Present Hon. Herbert V. Walker, Judge

PLEA OF DEFENDANT, DOUGLAS—August 21, 1959

THE PEOPLE OF THE STATE OF CALIFORNIA,

VS.

In each of the following cases: Deputy District Attorney Kenneth J. Thomas and the Defendant with counsel, present. Each defendant enters plea of "Not Guilty" and trial is set for 9 A.M. on the date and in the department indicated.

	Defendant	Defendant's Counsel	Date of Trial	Department	Remanded
218072	Frank Albert Hall	J. S. Fitzpatrick	Sept. 14, 1959	102	Bail
218078	Henry Wolf	Deputy Public Defender Charles D. Boags	Sept. 24, 1959	103	Yes
218187	Jack Boykin	Deputy Public Defender Charles D. Boags	Sept. 29, 1959	110	Yes
218196	William Douglas	Deputy Public Defender Charles D. Boags	Sept. 30, 1959	104	Yes
218230	Donald Eugene O'Neal	Deputy Public Defender Charles D. Boags	Sept. 30, 1959	131	Yes
218237	Fredrick Rudolph Vasquez	Deputy Public Defender Charles D. Boags	Sept. 30, 1959	107	Bail
218284	Leon Watkins	Deputy Public Defender Charles D. Boags	Sept. 30, 1959	111	Yes
218338	Gilbert Mathew Deninger and Richard Earl Gardner	Deputy Public Defender Charles D. Boags	Oct. 1, 1959	101	Yes
		Deputy Public Defender Charles D. Boags	Oct. 1, 1959	101	Yes
218406	Arthur Blea	Max Solomon	Sept. 10, 1959	111	Bail

[fol. 17] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Department No. 100

218196

Present Hon. Herbert V. Walker, Judge

PLEA OF DEFENDANT MEYES—August 21, 1959

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

BENNIE WILL MEYES

Deputy District Attorney Kenneth J. Thomas and Defendant with counsel, Deputy Public Defender Charles D. Boags, present. Defendant enters plea of "Not Guilty" and denies prior convictions as alleged. Trial is set for September 30, 1959, 9 A.M. in Department 104. Remanded.

[fol. 18] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Department No. 104

218196

Present Hon. Bayard Rhone, Judge

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

WILLIAM DOUGLAS AND BENNIE WILL MEYES

MINUTE ENTRIES OF TRIAL—September 30, 1959—October 1-2, 1959

Each Cause is called for trial. Deputy District Attorney Joe Carr and Defendants with counsel, Deputy Public Defender Norman R. Atkins, present. Defendants file Affi-

davit of Prejudice and make oral motion of peremptory challenge under Section 170.6 C. C. P. Motion is argued and denied. Motion for continuance of trial is argued and denied. Defendant Douglas moves the Court for appointment of an attorney under Section 987a, Penal Code, and is denied by the Court. On motion of defendants, all witnesses are ordered excluded from the court room during the trial, except when testifying, and to be sequestered in an adjoining court room, except the Police Officer assisting the Deputy District Attorney. Later: Each defendant, separately, out of the presence of the jury panel, dismisses his attorney, without qualification, and the Court declares each defendant to be representing himself in propria persona. Each defendant refuses to examine the prospective jurors for cause, and refuses to exercise any peremptory challenge to the jury panel or individual jurors. By order of the Court, the following jurors are sworn and empanelled to try the cause:

Alan B. Schnitzer, Mrs. Hilda W. McVay, Mrs. Vera Traun, Evan E. Rhys, John A. Peterson, Allen Hurt, Sheppard M. Moore, Mrs. Myrtle E. Hadnell, Mrs. Florence C. Blight, Mrs. Annie B. Reuter, Mrs. Bertha A. Lombard, Donald A. Nolan.

Theodore A. Blundell is sworn and empanelled as an Alternate Juror. An Attachment for Defaulter is ordered issued for James Dunlop, a defaulting witness, and service thereof is ordered withheld until October 1, 1959. At 3:43 P.M., trial is recessed and continued to October 1, 1959 at 9 A.M. The Jury is admonished. Witnesses are instructed to return and report to the Court Clerk by 9 A.M. on October 1, 1959. Defendants are remanded.

[fol. 19] Each: Trial is resumed from September 30, 1959, with the Jury and Alternate Juror present as before. Deputy District Attorney Joe Carr and Defendants in propria persona, present. Attachment for Defaulter is ordered served as to James Dunlop, defaulting witness. All witnesses are ordered excluded from the court room as heretofore and are ordered by the Court to be sequestered in the courtroom of the Superior Court, Department

105, to be called to testify as needed. Defendants are brought before the Court, out of the presence of the Jury, and directed by the Court to make any motions deemed by them to be proper. Motion of Defendant Meyes for continuance of trial is denied by the Court. Request of Defendant Douglas for appointment of counsel under Section 987a, Penal Code is denied. The Jury is seated in the jury box at 10:10 A.M. The Clerk reads the Information and the pleas of the defendants thereto to the Jury. People waive opening statement. Defendants waive opening statements. Fanny Tabbs, Janie Mae Booker, Louise Adams, Aaron Alfred Hatch, Henry Carroll, Frank Stevenson, Moses Forrest, Jr., M. C. Smith, Mathe Smith, J. E. Chambers and Walter F. Bitterolf are sworn and testify for the People. People's Exhibit #1 (Photostatic Copy of California Chauffeur's License #B1689911 being Exhibit #59 of Superior Court Case #298300) is admitted in evidence by reference; and People's Exhibits Nos. 2 (Fingerprint Card of Bennie W. Meyes) and 3 (a series of 9 documents of State of California Department of Corrections, including fingerprint card and photo of Bennie Meyes) are admitted in evidence for a limited purpose and filed. People rest. Defendants are informed by the Court as to their rights of defense, and defendants decline to offer evidence on their own behalf in their own defense, and the Court declares that the defendants rest. No rebuttal. People rest, and the Court declares that the evidence is closed. People argue the cause. Each defendant declines to argue the cause. The Court declares the cause submitted. James Dunlop, defaulting witness, is returned into open court on Attachment for Defaulter issued on September 30, 1959, and is remanded into custody of the Sheriff and ordered to return to court on October 2, 1959 at 9 A.M. for hearing re Contempt of Court. At 3:38 P.M., the trial is recessed and continued to October 2, 1959 at 9 A.M. The Jury is admonished. Defendants are remanded. [fol. 20] Each Trial is resumed from October 2, 1959, with the Jury and Alternate Juror present as before. Deputy District Attorney Joe Carr and Defendants in propria persona, present. The Court instructs the Jury. The Bailiff is sworn to take charge of the Jury, and the Alternate Juror. At 9:26 A.M. the Jury retires to the jury room

to deliberate the cause. At 11:21 A.M., the Jury returns into the court with the following verdicts:

Title of Court and Cause

"We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count One of the information and find it to be Robbery of the first degree."

This 2nd day of October 1959, Allen Hurt, Foreman."

"We, the Jury in the above entitled action, find the Defendant Bennie Will Meyes guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count One of the information and find it to be Robbery of the first degree."

This 2nd day of October 1959, Allen Hurt, Foreman."

"We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Two of the information and find it to be Robbery of the first degree."

This 2nd day of October 1959, Allen Hurt, Foreman."

"We, the Jury in the above entitled action, find the Defendant Bennie Will Meyes guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Two of the information and find it to be Robbery of the first degree."

This 2nd day of October 1959, Allen Hurt, Foreman."

"We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Three of the information and find it to be Robbery of the first degree."

This 2nd day of October 1959, Allen Hurt, Foreman."

[fol. 21] "We, the Jury in the above entitled action, find the Defendant Bennie Will Meyes guilty of Robbery, in violation of Section 211, Penal Code of California, a felony."

is charged in Count Three of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

"We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Four of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

"We, the Jury in the above entitled action, find the Defendant Bennie Will Moyes guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Four of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

"We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Five of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

"We, the Jury in the above entitled action, find the Defendant Bennie Will Moyes guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Five of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

"We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Six of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

[fol. 22] "We, the Jury in the above entitled action, find the Defendant Bennie Will Moyes guilty of Robbery, in violation of Section 211, Penal Code of California, a felony,

as charged in Count Six of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Assault With Intent To Commit Murder, in violation of Section 217, Penal Code of California, a felony, as charged in Count Seven of the information.

This 2nd day of October 1959, Allen Hurt, Foreman.

We, the Jury in the above entitled action, find the Defendant Bennie Will Meyes guilty of Assault With Intent to Commit Murder, in violation of Section 217, Penal Code of California, a felony, as charged in Count Seven of the information.

This 2nd day of October 1959, Allen Hurt, Foreman.

We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Eight of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

We, the Jury in the above entitled action, find the Defendant Bennie Will Meyes guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Eight of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Nine of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

We, the Jury in the above entitled action, find the Defendant Bennie Will Meyes guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as

charged in Count Nine of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

[fol. 23] "We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Ten of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

"We, the Jury in the above entitled action, find the Defendant Bennie Will Moyes guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Ten of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman.

"We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Assault With A Deadly Weapon, in violation of Section 245, Penal Code of California, a felony, as charged in Count Eleven of the information.

This 2nd day of October 1959, Allen Hurt, Foreman.

"We, the Jury in the above entitled action, find the Defendant Bennie Will Moyes guilty of Assault With A Deadly Weapon, in violation of Section 245, Penal Code of California, a felony, as charged in Count Eleven of the information.

This 2nd day of October 1959, Allen Hurt, Foreman.

"We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Assault With A Deadly Weapon, in violation of Section 245, Penal Code of California, a felony, as charged in Count Twelve of the information.

This 2nd day of October 1959, Allen Hurt, Foreman.

"We, the Jury in the above entitled action, find the Defendant Bennie Will Moyes guilty of Assault With A Deadly Weapon, in violation of Section 245, Penal Code of

California, a felony, as charged in Count Twelve of the information.

This 2nd day of October 1959, Allen Hurt, Foreman."

[fols. 24-79] "We, the Jury in the above entitled action, find the Defendant William Douglas guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Thirteen of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman."

"We, the Jury in the above entitled action, find the Defendant Bennie Will Meyes guilty of Robbery, in violation of Section 211, Penal Code of California, a felony, as charged in Count Thirteen of the information and find it to be Robbery of the first degree.

This 2nd day of October 1959, Allen Hurt, Foreman."

"We, the Jury in the above entitled action, find the charge of the first prior felony conviction alleged against the Defendant Bennie Will Meyes, as occurring on the 2nd day of January, 1948, as charged in the information to be true.

This 2nd day of October 1959, Allen Hurt, Foreman."

"We, the Jury in the above entitled action, find the charge of the second prior felony conviction alleged against the Defendant Bennie Will Meyes, as occurring on the 30th day of November, 1950, as charged in the information to be true.

This 2nd day of October 1959, Allen Hurt, Foreman."

"We, the Jury in the above entitled action, find the charge of the third prior felony conviction alleged against the Defendant Bennie Will Meyes, as occurring on the 12th day of January, 1951, as charged in the information to be true.

This 2nd day of October 1959, Allen Hurt, Foreman."

The Jury is polled on each verdict as to each count, separately, and all jurors answer in the affirmative as to each verdict as polled, separately. All verdict forms submitted to the Jury and instructions given (none was refused)

are filed. The Jury is discharged. James Dundop, defaulting witness, apprehended on Attachment for Defaulter on October 1, 1959, is produced into court by the Sheriff, the Contempt is dismissed, the Attachment for Defaulter is recalled, and the defaulting witness is released and discharged from Contempt. Defendants waive time for sentence and cause is continued to October 23, 1959 at 9 A.M. for probation and sentence. Probation report is ordered for each defendant. Each Remanded without bail.

[fol 80] IN THE SUPERIOR COURT, STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

Department No. 104

S. C. No. 218196

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

VS.
WILLIAM DOUGLAS AND BENNIE WILL MEYES, Defendants

MOTION FOR NEW TRIAL Filed October 23, 1959

To the Judge of the above titled Court:

Greetings:

Comes now William Douglas, Bennie Will Meyes, a defendant in the Herein Cause, and respectfully moves the court to set aside the Verdict of the Jury and grant him a New Trial in the Herein Cause.

Section 1155, California Penal Code, and all other statutory provisions governing appeals.

Very Respectfully, William Douglas & Bennie Will Meyes.

Date: Oct. 23, 1959.

[PG. 81] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

DENIAL OF MOTION FOR NEW TRIAL AND SENTENCE OF DEFENDANT
WILLIAM DOUGLAS—October 23, 1959

Department No. 104

218196

Present Hon. Bayard Rhone, Judge

THE PEOPLE OF THE STATE OF CALIFORNIA

VS.

WILLIAM DOUGLAS

Deputy District Attorney Joe Carr and Defendant in propria persona, present. Defendant's motion to appoint the Public Defender is denied. The Court finds defendant has had an opportunity to read the Probation Officer's report. Motion for new trial is denied. The Court finds there is no legal reason why judgment should not be pronounced and defendant is arraigned for judgment. Each Count: Probation denied. Defendant is sentenced as indicated. Motion for stay of execution of sentence is denied.

Whereas the said defendant having been duly found guilty in this court of the crime of Robbery (Sec. 211 PC), a felony, as charged in each of the Counts 1, 2, 3, 4, 5, 6, 8, 9, 10 and 13 of the information, which the Jury found to be Robbery of the first degree; Assault With Intent to Commit Murder (Sec. 217 PC), a felony, as charged in Count 7 and Assault With a Deadly Weapon (Sec. 245 PC), a felony, as charged in each of the Counts 11 and 12.

It is Therefore Ordered, Adjudged and Decreed that the said defendant be punished by imprisonment in the State Prison for the term prescribed by law, on said counts. Sentences as to Counts 2, 3 and 12 are ordered to run Concurrently with sentence in Count 1; Count 4 Consecutively to Count 1; Count 5 Consecutively to Count 4; Count 6 Consecutively to Count 5; Counts 7 and 8 Concurrently with Count 6; Count 9 Consecutively to Counts 6, 7 and 8; Counts

10 and 11 to run Concurrently with Count 9; Count 13 to run Consecutively to Counts 9, 10 and 11.

It is further Ordered that the defendant be remanded into the custody of the Sheriff of the County of Los Angeles, to be by him delivered into the custody of the Director of Corrections at the California State Prison at Chino.

[fol. 82] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

DENIAL OF MOTION FOR NEW TRIAL AND SENTENCE OF DEFENDANT BENNIE WILL MEYER - October 23, 1959

Department No. 104

248196

Present Hon. Bayard Rhone, Judge

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.
BENNIE WILL MEYER

Deputy District Attorney Joe Carr and Defendant in propria persona present. Defendant's motion to appoint the Public Defender is denied. Defendant has read the report of the Probation Officer. Motion for new trial is denied. The Court finds there is no legal reason why judgment should not be pronounced and defendant is arraigned for judgment. Judge County Probation denied. Defendant is sentenced as indicated. Defendant is found to be an habitual criminal under 644a, Penal Code. A stay of execution of sentence is denied.

Whereas the said defendant having been duly found guilty in this court of the crime of Robbery (Sec. 211 PC), a felony, as charged in each of the Counts 4, 2, 3, 4, 5, 6, 8, 9, 10 and 13 of the information, which the Jury found to be Robbery of the first degree; Assault With Intent to Commit Murder (Sec. 217 PC), a felony, as charged in Count 7, and Assault With a Deadly Weapon (Sec. 245 PC), a felony, as charged in each of the Counts 11 and 12; prior convictions

tions having been found true as alleged, to wit: Burglary, a felony, Superior Court of the State of California, Los Angeles County, January 23, 1948; Robbery, a felony, Superior Court of the State of California, Los Angeles County, November 30, 1950 and Robbery, a felony, Superior Court of the State of California, Los Angeles County, January 12, 1951 and served a term in a State Prison for each of said prior convictions.

It is Therefore Ordered, Adjudged and Dececd that the said defendant be punished by imprisonment in the State Prison for the term prescribed by law, on said counts. Sentences as to Counts 2, 3 and 42 are ordered to run Concurrently with sentence in Count 1; Count 4 Consecutively to Counts 1, 2, 3 and 12; Count 5 Consecutively to Count 4; Count 6 Consecutively to Count 5; Counts 7 and 8 Concurrently with Count 6; Count 9 Consecutively to Counts 6, 7 and 8; Counts 10 and 11 Concurrently with Count 9; Count 13 Consecutively to Counts 9, 10 and 11. These sentences to run Consecutively to sentence previously pronounced under conviction for Murder of the second degree and parole violation presently owing.

It is further Ordered that the defendant be reband into the custody of the Sheriff of the County of Los Angeles, to be by him delivered into the custody of the Director at the California State Prison at Chino.

[fol. 83] [File endorsement omitted]

IN THE SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF
LOS ANGELES

Department No. 104
S. C. Crime No. 218196

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

WILLIAM DOUGLAS AND BENNIE WILLY MEYER, Defendants

FORMAL NOTICE OF APPEAL AND REQUEST FOR RECORDS
Filed October 28, 1959

To The Judge of the Titled Superior Court and The
District Attorney of Los Angeles County.

Greetings:

You and each of you will Please take Notice, that defendant William Douglas in Propria Persona appeals to the Second District Court of Appeals of the State of California, from the Order denying defendants Motion for a New Trial; and from the Judgment of the above titled Superior Court Sentencing him to State Prison on Oct. 23 1959, A.D.

[fol. 84] This Appeal is taken under provisions of Section 1237 et seq. and all Statutory and Constitutional Provisions which govern such Appeals.

Date

Respectfully Submitted, Name William Douglass,
Booking No. 585873,
Address, 306 No Broadway

[fol. 85] IN THE SUPERIOR COURT, STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

Department No. 104

S. C. No. 218196

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

VS.

WILLIAM DOUGLAS AND BENNIE WILL MEYES, Defendants

PRACIPE FOR THE RECORDS

The Defendant William Douglas has filed simultaneously with this Praeipe his Notice of Appeal with the above Titled Court:

Accordingly the Clerk of the court will please prepare, certify and deliver the proper number of copies of the Reporters transcript and Clerks transcript on Appeal to the Following:

Second District Court of Appeal, Suite 1202, State Bldg.,
Los Angeles, 17 California.

[fol. 86] The Defendant—William Douglas, in the Los Angeles County Jail, or wherever he may be incarcerated to include:

1. Opening Statement of Prosecutor & Defence;
2. All Motions, Prosecution and Defence;
3. All objections, Prosecution and Defence;
4. All testimony in the Herein Cause; Prosecution and Defence;
5. Instructions to the Jury, both given and Refused;
6. Argument to the Jury both Prosecution and Defense,
7. Voir Dire of the Jury.

The Clerk of the Court will Please complete and deliver the said certified transcripts as requested within the Forty (40) day period required by Law.

Additional address copies to:

The Attorney General of California, Los Angeles Division, State Building, Los Angeles 17, California.

[fol. 87] Date: October 27-1959.

name: William Douglass.
address: 3d No Broadway
No-585873—Tank 11-D-2

[fol. 88] IN THE SUPERIOR COURT, STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

Department No. 104

S.C.C. No. 218196

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiffs,

vs.

WILLIAM DOUGLAS AND BENNY WILL MEYER, Defendants

REQUEST FOR STAY OF EXECUTION

To the Judge of the above titled Court:

Greetings:

Comes now the Defendants appellant, William Douglas, in The Herein Cause, and respectfully requests that he may be granted indefinite (Stay of Execution) of Sentence until he has completed his Appeal.

Respectfully, William Douglass.

Date Oct. 27, 1959.

[fol. 89] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 218196

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

v.

BENNIE WILL MEYES, Defendant

NOTICE OF APPEAL

Bennie Will Meyes, the defendant in the above entitled cause, hereby gives notice that he appeals from the judgment rendered and the order denying the motion for new trial in the above entitled cause to the District Court of Appeal of the State of California, Second Appellate District.

Dated this 23 day of Oct., 1959.

Bennie Will Meyes, In Propria Persona

[fol. 91] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 218196

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

v.

BENNIE WILL MEYES, Defendant

REQUEST FOR ADDITIONAL RECORD AND ORDER THEREFOR

Bennie Will Meyes, defendant above named, respectfully requests, as provided by rule 33 of Rules on Appeal, in addition to the normal record on appeal the inclusion of the following:

(1) All instructions given and refused. Defendant complains the trial judge erred in giving and refusing to give certain of said instructions.

(2) Proceedings on the voir dire examination of jurors. Defendant contends the trial judge erred in restricting the voir dire examination and the refusal of the trial judge to grant the defendant the right to have counsel to represent his interest.

(3) Arguments to the jury. The foregoing additional record is necessary to enable defendant to fully and fairly present the issues to be decided in this Appeal.

Dated this 23 day of Oct., 1959.

Bennie Will Moyes In Propria Persona.

[fol. 93] Order directing inclusion of additional material in record. Upon reading and considering the foregoing request for inclusion of additional material in record.

It is hereby ordered that said request be and the same is hereby granted.

Dated this 26 day of Oct., 1959.

Bayard Rhone, Judge.

[fol. 94]. Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1-2] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Department No. 104

No. 218,196

Hon. Bayard Rhone, Judge

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

VS.

WILLIAM DOUGLAS AND BENNIE WILL MEYES, Defendants

Reporter's Transcript On Appeal

September 30, 1959

October 1, 1959

October 2, 1959

APPEARANCES:

For the People: William B. McKesson, District Attorney,
By: Joseph Carr, D.D.A., 600 Hall of Justice, Los Angeles
12, California.

For the Defendants: Norman R. Atkins, Deputy Public
Defender.

[fol. 3] Los Angeles, California, Wednesday, September
30, 1959; 9:30 A.M.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Are you ready in the case of Douglas and
Meyes?

Mr. Atkins: May we approach the bench on that, your
Honor? I have a matter to discuss that I would like to
discuss at the bench.

The Court: Okay.

(Off the record discussion held at the bench.)

The Court: The People against William Douglas and Benjie Will Meyes. Ready for trial?

Mr. Atkins: Your Honor, we have filed the affidavit. It is my understanding that when such affidavit is filed, the case is then sent back to master calendar for resetting for trial.

The Court: No. The matter is now ready for trial and it will not be reset for trial. I want to know if you are ready for trial.

Mr. Atkins: We are not ready for trial for the reason that in view of the many counts involved—there are 13 counts—the defense is not ready because we have not been able to complete the investigation as to certain defenses which we are trying to develop as to these many dates. In other words, the investigation is not complete as to certain defenses which we are trying to develop.

[fol. 4] The Court: It leaves me so vague I cannot get ahold of it.

Mr. Atkins: Let me be more explicit. There are many dates and alibis as to any of these dates would certainly help and aid the defense in the matter. There are so many that it is difficult to check each one and develop the people who might have known these men and who might for one reason or another be able to remember certain dates. For that reason we have not been able to complete the investigation, contact these people, and interrogate them, asking them their possible reasons for remembering certain dates. We have just not been able to complete that investigation, your Honor.

The Court: Are the People ready?

Mr. Carr: I have not had a chance to call the witnesses yet on that, and insofar as the motion for continuance is concerned, I will ask your Honor to take the matter under consideration. We have a great number of witnesses for which subpoenas were issued. As I recall, being advised by our process server, all but either one or two have already been served. They should be coming to court pursuant to the order contained in the subpoena. I have not had a chance to check to see whether or not they are here.

However, going to the first proposition which counsel has brought to the Court's attention, that is the motion under [fol. 5] Section 170.6 of the Code of Civil Procedure, gen-

erally referred to as a peremptory challenge to the Judge, I would like to inquire from the defendants' counsel and from each of the defendants, if I may, your Honor, as to whether or not they and each of them jointly and severally have entered into this so-called peremptory challenge as to the Judge now presiding in this court.

Mr. Atkins: I do not quite understand, your Honor. The affidavit speaks for itself. They have both signed it. As far as I am concerned, I have not joined in it because I am not required to.

Mr. Carr: The affidavit may speak for itself, but I think in open court the defendants should express their desire as well. It isn't sufficient merely to file the affidavit. There must be a motion made in conjunction therewith. Now, the motion has not been made. The affidavit has been filed. However, your Honor, I am willing to forego the formality of the filing of the motion and consider it as an oral motion if we can have an expression from each of the defendants as to whether or not this, in fact, is their motion, because the affidavit was signed by them.

The Court: Yes. There are two things required under the Code. One is a motion which may be either oral or in writing, and the other is the affidavit. You have the affidavit.

Mr. Atkins: Your Honor, I will make an oral motion [fol. 6] in behalf of these two defendants to challenge your Honor in regard and for the reasons stated in the affidavit, if that is considered necessary. I did not read that into the statute myself. I did notice a provision for filing an oral motion at, I then having one day to file the written affidavit. I did not recall that an oral speaking motion was necessary. However, if it is, I make it at this time.

The Court: The motion is denied. Section 170.6, Subdivision 2 says, "Where the Judge assigned to or who is scheduled to try the cause or hear the matter is known at least ten days before the date set for trial or hearing the motion shall be made at least five days before that date."

Not having been made five days before, the motion is denied. The matter will proceed to trial. I assume there will be a jury.

Mr. Atkins: Has your Honor ruled on my motion for a continuance for the reasons stated?

The Court: Yes. I do not believe that your reasons are sufficient, so the matter will be set for trial.

(Unrelated matters were then heard by the Court.)

The Court: People versus Douglas and Meyes. Do you have another motion?

Mr. Atkins: Yes, Your Honor.

The Court: All right.

RENEWAL OF MOTION FOR CONTINUANCE AND DENIAL THEREOF

Mr. Atkins: Your Honor, I would renew my motion for [fol. 7] a continuance for the following reasons: First, Mr. Douglas feels that he would like to have an attorney of his own to represent him. He feels that there may be during this trial conflict which will arise in which case he would want an attorney of his own to be arguing and representing him alone apart from Meyes.

Now, this case is very complicated. It has many counts and it has a great history as your Honor knows.

Bennie Meyes has suffered a conviction of second degree murder which is tied up in this case. However, Douglas was acquitted on that charge. For that reason, amongst others, I think that, perhaps, Mr. Douglas has a well-founded reason for believing that a conflict might develop during this trial and should have counsel of his own.

Now, in talking to these two defendants, this problem arose only yesterday amongst other problems, when I discussed that with them in the final talking to them preparatory to coming to court today.

In addition to that, I must state that in all fairness the investigation is not complete as to the defenses which these defendants would like to present. This is not a question of dilatory tactics or reluctance to go to trial in general, but it is, to my way of thinking, simply impossible for them to be able to rack their brains and recall people and places that [fol. 8] they may have been on all of these different dates. However, they are trying and they do have certain people that they are trying to contact and through me we will, perhaps, contact them toward the development of alibi defenses in the case of some of these charges. This is difficult to do because of the long period of time involved. These occurrences happened last year, and it is difficult at best to

do that, but I think that they have a right to try. On my own part I feel that I am prepared. However, I have not been able to study the transcripts of the previous trials which are voluminous, and through the press of all of the other business that our office handles, I have been handling a case a day like every other deputy. I have not been able to give this the time that I think I should devote to it at present. So, for that reason I myself feel that I would like some more preparation.

For all of those reasons I think that it would be manifestly unfair to take these two defendants to trial today on these charges, and I would most respectfully request a continuance at this time.

Mr. Carr: For the purpose of the record, first, your Honor, inadvertently I failed to complete my record on the motion, that is the peremptory challenge to the Court.

Section 170.6 of the Code of Civil Procedure became effective insofar as criminal proceedings are concerned on the 18th of September of this year. I would like the record, [fol. 9] to show, your Honor, that you, the Honorable Bayard Rhone, have been the Judge presiding in Department 104 of this court since the 2nd of January of this year.

The Court: It was about the 19th of January.

Mr. Carr: Well, the 19th of January. I stand corrected.

—and have been continuously in attendance in this department except for a period, as I recall, of about a week or ten days in the month of June, early part of June or middle of June of this year. So that it was, the notice thereof was public domain. Your Honor, was presiding here and such was the notice on the 18th of September. This is the 30th. The notice under the Section 170.6, I think, it would appear was not timely filed.

Now, going on to the matter of the continuance, relative to the defendants lack of notice and inability to appear, examination of the Information on file here will indicate that there are the following dates upon which allegedly these offenses charged against them occurred. I am going backwards because that is the order in which they are alleged: The 10th of October, the 24th of September, the 16th of August, the 25th of July, and the 21st of July.

Now, as counsel has pointed out, both of these defendants were charged with murder. The first trial occurred as

memory serves me correctly sometime, I believe, in April [fol. 10] or May of this year. At that time in connection with the murder trial both defendants being present and represented by counsel by way of showing motive for this murder that involved a police officer as a victim the People presented evidence with the permission of the Court to show that these defendants engaged in certain robberies. The robberies which we brought forth evidence involved in the first trial involved the 16th of August. The same witness who was I mean the same person who was alleged as the victim in Count 5 on the 16th of August testified in both the first and second of those murder trials, the first resulting in a mistrial.

As to Count 6, 7 and 8, as to the date of the 25th of July, wherein the alleged victim, Henry Carroll, is concerned in the Information before you, Mr. Carroll testified in both of those murder trials concerning the alleged robbery. As to the date of the 21st of July, there was evidence offered concerning that particular robbery in connection with both murder trials, and now as to the 10th of October, I have no recollection at this time whether evidence was introduced concerning that robbery or not. That is the 10th of October at the first trial. If my recollection is clear there was evidence as to the robbery as to that particular date being introduced in the second murder trial.

So, wherein the defendants now say that they had no [fol. 11] previous notice other than that, this preliminary examination.

The Court: Well, I will interrupt you. This name Fanny Tabbs that is mentioned in Count 4 of the Information sounds familiar.

Mr. Carr: It does, your Honor, but not in connection with the hearing here. Your Honor recalls People versus Jackson that was tried before you.

The Court: Jackson case.

Mr. Atkins: Your Honor, may I state.

The Court: I can get my notes if that is important to find out if she testified.

Mr. Carr: No. I do not think she did, your Honor. I think the first time I saw Fanny Tabbs was in this court room in connection with that People versus Jackson matter.

The Court: I think that is right.

Mr. Atkins: Your Honor, I did not imply that these defendants had no notices of these offenses before. I am saying that they are trying to develop—we are trying to develop alibi defenses concerning these which they have not before. Now, I am not saying they did not have notice of these. I am saying that we are trying to develop these defenses.

Now, I just wish the record to be clear on what I said and what the implications of what I said are. They have [fol. 12] been tried, this will be the third time, on these robberies in which proof will be offered on these robberies. I am not saying they have not had notice. I am saying that for the first time they are trying to develop facts which they have not done before, and this is not complete, your Honor.

Now, in addition, let me state this: Mr. Douglas states that his mother has a serious illness, that he does not feel mentally ready for trial in that he is worried about his mother and does not feel prepared for the trial. In other words, he does not feel prepared to defend himself now with all of the faculties which he possesses. I offer that as another reason.

Generally, I do not think that these defendants are ready for trial or that they should be pushed to trial this morning on this case in my opinion, and on their behalf I think it would be unfair to them. Your Honor, I do not think that a continuance is such a great thing to ask under the circumstances. It might not be great.

The Court: Well, with reference to the contention that the investigation is not complete, it is not complete because the defendants have been racking their brain as to an alibi and they have had plenty of time to do that and, if they cannot remember by now, I think it is a little late.

Mr. Atkins: It is not quite a question of that, your Honor. [fol. 13] It is a question of contacting people, finding them and questioning them concerning their remembrances.

The Court: Well, frankly, I do not think the continuance should be granted on that ground. Now, with reference to any conflict in interest, I may have to appoint another counsel. I cannot see any at the moment, though. Do you have any thoughts on that, Mr. Carr?

Mr. Carr: Well, counsel speaks of an alibi. Now, if each

defendant has evidence concerning an alibi, it is not an alibi as to the co-defendant. It is an alibi as to him. That in and of itself does not create a conflict nor has counsel brought to the Court's attention wherein a conflict appears.

Now, as to those robbery transactions that I enumerated to the Court, that evidence was introduced on both of these homicide matters. The defendants testified concerning those robberies, and in their testimony made a general and categorical denial as to any participation or knowledge of those robberies. Now, that in and of itself does not create a conflict; and in going back over the evidence in my memory, I do not recall where any conflict appeared at all in the course of the proceedings.

Now, if since that time something has occurred, I think, that it should be pointed out to the Court. I do not believe it is sufficient merely to advise the Court that there is a conflict and then the defense to seek shelter behind a confidential communication of anything of that matter. You have got to fish or cut bait, if your Honor please, and I think that under the recent trend of the cases as they have come down, although there is none in point, I think that certain defenses, if they exist on behalf of the defendant, that a disclosure should be made to the Court and would not violate the confidential communication because as was pointed out in the Powell, Riser and Carter cases, and those subsequent thereto, they hold that the trial is not a contest but is a determination of guilt or innocence, the administration of justice. The People have been held required to disclose certain matters that previous thereto could be deemed to be confidential because they were such in the public interest. In other jurisdictions that have the law requiring a disclosure of an alibi if any be used at a certain time prior to trial or the defendant be precluded from using the alibi that was decided by the courts as not being a violation of confidential communication.

In other jurisdictions that do not have a law requiring disclosure of an alibi, insofar as insanity is concerned, that is where the issue is raised as to the guilt, raised as to insanity, both in the same proceeding, the statutes require that the prosecution be given notice that insanity will be raised in there. That is not violative of confidential com-

[fol. 15] munication. I do not see why counsel cannot bring to the Court's attention wherein he believes a conflict will occur.

Mr. Atkins: Your Honor, first off, let me make something clear. I am not asking for a dismissal of the charges. I am asking for a continuance. Mr. Carr says, "What has happened?" He said, "Past history proves that no conflict appears."

What has happened since then? Well something has happened since then, your Honor. Douglas was acquitted and Bennie Meyes was convicted. Now, I can defend both of them, but I am at a disadvantage in that if I defend both of them the stigma of the murder conviction as to Bennie Meyes—I have to talk out of one side of my mouth as to Bennie Meyes and out of the other side of my mouth as to Mr. Douglas.

The Court: I do not know why —

Mr. Atkins: I do not think that it is fair for Mr. Douglas. He should have an attorney who would represent him and I am alone who can make the best use of the fact that an acquittal was earned on his behalf in the murder trial. That is a conflict. I submit to your Honor that that is a conflict in presenting the case which should be obvious to anyone that two lawyers are necessary.

The Court: All right, the motion is denied.

[fol. 16] The case resumed at 10:10.

The Court: People against Douglas and Meyes.

MOTION FOR CONTINUANCE AND DENIAL THEREOF

Mr. Atkins: Your Honor, on behalf of Mr. Douglas, I has asked me to make a motion for a continuance so that he may retain the attorney which he talked to whose name is Leo Brennan, and has made arrangements to have him come in and defend him; and he wishes me to bring that up, to bring that to your Honor's attention. He has been in touch with Leo Brennan and has made arrangements to have Leo Brennan defend him.

The Court: Well, this matter has been on the calendar before, and there have been three continuances before, three motions for continuance before. I cannot hear these matters piecemeal. The motion is denied.

Mr. Atkins: On behalf of ~~Ben~~ Bennie Meyes, Mr. Meyes requests a continuance. He does not feel that I am adequately prepared for trial and requests a continuance for that reason and wishes to address the Court at this time.

The Court: The motion will be denied.

Swear the jury.

COLLOQUY BETWEEN COURT AND DEFENDANTS

Mr. Atkins: May Mr. Meyes be heard, your Honor?

The Court: No. He may not.

The prospective jury panel was sworn.

The Clerk: Ask all your names, you will fill the jury box beginning in the back row, the last seat this way inside of [fol. 17] the railing. The seat outside of the railing is for an alternate.

Allen B. as in bar ~~Sch~~ Schmitzer, Schmitzer.

Mr. Douglas: Say, Your Honor, I'd like to address the Court.

The Court: No.

Mr. Douglas: I am denied the right to obtain a private counsel?

The Court: I have already ruled upon that matter. We are not going to hear those matters piecemeal. Please call the next juror.

The Clerk: Mr. Hilda W. McVay, McVay.

Mrs. Vera Traub, Traub as in Tom, Traub.

Edna E. Rhys, Rhys.

The Court: How do you spell the first name?

The Clerk: E-y-a-n, first name.

Defendant Meyes: Your Honor, I don't want this man to represent me. I don't feel that he is qualified to represent me.

The Court: He is the counsel that has been appointed.

Defendant Meyes: He is not qualified to represent me because he has not read these transcripts. He doesn't know what are in those transcripts. He hasn't.

The Court: Please be seated.

Mr. Meyes: He's only been up here to talk to us twice, and he cannot give me a defense.

[fol. 18] The Court: Please be seated and we will proceed.

Defendant Meyes: He is representing me against my wishes. I have asked the Federal Bureau of Investigation to investigate these fake and phony charges of robbery these people have brought against us.

The Court: All right, please be seated. Mr. Atkinson is the attorney that has been assigned to represent you and he will represent you.

Defendant Meyes: He is not properly prepared. He hasn't read these transcripts, your Honor. He doesn't know what are in these transcripts.

The Court: Mr. Meyes, be seated, and we will proceed with this trial.

Defendant Meyes: I think, your Honor, that we are entitled to counsel.

The Court: The motion has been made and has been passed upon. Please be seated.

The Clerk: John A. Peterson, Peterson.

The Court: Please, Mr. Meyes, we will take a recess, if necessary, and I trust that I do not have to make any particular orders to—

Defendant Meyes: Your Honor, you should hear me out, your Honor. I feel that I'm entitled to be heard. After all, if I get convicted of these fake robberies, I'm the guy that has to go to the penitentiary and do time.

The Court: Just a minute. I'm not going to have any [fol. 19] we had plenty of time for motions. We heard motion after motion this morning before the jury was called. Please be seated and we will proceed with this trial.

Mr. Atkins: I am not prepared to go to trial, your Honor.

The Court: That may be, but there has to be a time when we have to go to trial whether anybody thinks they are prepared or not.

Defendant Meyes: Counsel hasn't prepared his case.

The Court: Will you be seated.

Defendant Meyes: He hasn't read these transcripts. He doesn't know what are in these transcripts. If I get convicted, I will go to the penitentiary.

The Court: Mr. Meyes: Mr. Meyes—

The Defendant Meyes: These are fake robberies.

The Court: Let the record show that Mr. Meyes is addressing the jury panel and not the Court. I will insist upon

order in this courtroom from everyone. Do you understand that?

Defendant Meyes: I think——

The Court: I will insist upon order, and you shall speak through your attorney. You may not address the Court or anyone except through your attorney.

Defendant Meyes: Well, Your Honor, this man——

The Court: Please be seated.

Defendant Meyes: —doesn't represent me.

[fol. 20] Mr. Atkins: May I address the Court?

The Court: You may address the Court, Mr. Atkinson, but you be seated, Mr. Meyes.

Mr. Atkinson: May I approach the bench with Mr. Carr?

The Court: All right.

(The following proceedings were held at the bench out of the hearing of the jury.)

DISCUSSION AT BENCH BETWEEN COURT AND COUNSEL

Mr. Atkins: Your Honor, I cannot even get the names of jurors down. I can't write the names of the jurors down. He is heckling me. He has lost confidence in me absolutely. I expressed the feeling to the Court that I myself wished more time to prepare this case. He has taken that to mean that I am unprepared and, in a manner of speaking, I myself would like to have, would rather be a good deal more prepared than I am. However, these outbursts of his are. I cannot control them. I tell him to sit down; he will not sit down, and I wish that to be made understood to your Honor.

The Court: I am aware of that.

Mr. Atkins: I will from time to time let your Honor know whether I can try this case under those circumstances, because if I cannot even write down the names of the jurors without him heckling me in my ear, I don't see how I am going to be able to try this case the way it should be tried.

Mr. Carr: Now, I'd like the record to indicate this, counsel. [fol. 21] It is my opinion that both of them are grand-standing. I will tell you why. Back about the early part of last month they sent letters out and a reporter from a local paper called the Tribune, which is a paper of general circulation principally among persons of the Negro race went up to see them, and they made a lot of accusations and

a lot of statements not only concerning the prior murder case but concerning the present cases that were pending, robbery cases; and it was published at great length, and from a sympathetic standpoint as to the defendants. The reporter subsequently came to me after the article was out and did not disclose that the article had already been printed. That is the one which was given by Meyes and Douglas, and I was asked certain questions concerning the various cases. Because the cases were then pending I indicated that I was not prepared or allowed ethically to discuss the matters, so a subsequent article came out again sympathetic to the viewpoint of the defendants and taking the position that neither the prosecution nor the police department wanted to talk or disclose anything.

Now, because of that, it is my opinion that Meyes and Douglas both are putting on this show for the purpose of the newspapers—that particular one, the Tribune—and further, as your Honor pointed out, that Mr. Meyes was not [fol. 22] addressing the Court but appeared to be addressing the panel, and the panel, I think I counted two persons of Negro race in the panel, and I think that your Honor is going to be confronted with a situation of this grandstanding all the way through these proceedings, not for the edification of any legal principles involved but merely seeking the sympathy of the newspapers. I do not think they are worried too much about preparation or no preparation. After all, Meyes yesterday was sentenced to States Prison on the second degree murder case, and he faces some prior robberies for which he still owes the State some time.

Judge Walker found him to be a habitual criminal, so he feels it does not make much difference one way or the other as far as he is concerned.

The Court: Incidentally, has he admitted or denied these priors?

Mr. Carr: There has been no

Mr. Atkins: I haven't discussed that with him, yet, your Honor.

Mr. Carr: They stand denied, your Honor, at this moment.

The Court: You are prepared to prove them, are you not?

Mr. Carr: Sure, we got the records.

Mr. Atkins: Your Honor, let me say this. From the point [fol. 23] of view of preventing as much so called grand

standing as possible - now, Meyes and Douglas apparently both feel they are not ready for trial, that they are being forced into trial and being pushed into trial. Could I suggest that if they understood that we would pick a jury and commence the trial tomorrow morning then, perhaps, that would assuage their feelings sufficiently that, perhaps, we would have an orderly trial. In other words, I would spend the day with them after picking the jury and, perhaps, the rest of the trial could then be an orderly procedure. I do not want to have to go through a trial with them shocking me either and not to mention the Court.

The Court: Well, an attorney cannot do an adequate job to his client if the client heckles him. That sounds like a reasonable suggestion, Mr. Carr?

Mr. Carr: That is all right with me. As a matter of fact, I was just wondering whether choosing the jury would be even completed today, because you have ten joint challenges and five severals; that is 15 in there; and in your doing the jury pick that regard it consumes some time. I have no objection to that latter. The only thing, though, it would not make any difference, with due respect to you, who it was, you are going to have this problem throughout the trial, Judge. They are grand-standing for the paper. There is no way to get around it. The only thing is we will just have to go ahead and put up with it, I guess.

Judge: Mr. Atkins. Well, now, I do not know about Bonnie Meyes, but as far as I am concerned, Douglas as of this point has a clean record, and at least as to Douglas I have to make positively sure whatever Bonnie Meyes does, and that brings me the old problem I brought up this morning, your Honor, concerning separate counsel for Douglas. Bonnie Meyes is doing things and the District Attorney left even pointed out more so the instance of his doing things which absolutely prejudices Douglas in a joint trial of this kind.

Mr. Carr: Douglas participated in this newspaper interview, too. He is quoted in there, and Douglas' record may be clear of felonies up to now, but it is not a clear record. I mean, let's not go overboard.

Mr. Atkins: I raise that at a joint trial is it just to Douglas? And, secondly, if there is a joint trial, should Douglas have one counsel to represent both he and Bonnie Meyes? I am

forced, your Honor, and my conscience forces me to bring that up again at this time.

The Court: All right.

Mr. Carr: There did not appear any conflict concerning these robberies in the last proceedings; plural make that.

The Court: We will proceed and we will try to continue to select the jury; and then after we get a jury, we will continue the matter until tomorrow morning, if we get the [fol. 25] jury by tomorrow morning.

(The following proceedings took place in open court in the presence and hearing of the prospective jurors.)

The Court: Mr. Atkinson, did you get all the names of the jurors that have been called so far?

Mr. Atkins: I have Mr. Schnitzer, Mrs. Hilda W. McVay, Miss Vera Trautza Mr. Rhys. I didn't get Mr. Rhys' first name.

The Court: It is spelled E v a n. His initial is E.

Mr. Atkins: John A. Peterson.

The Court: John A. Peterson.

Mr. Atkins: I have those so far.

The Court: All right. Mr. Atkinson has reported to the Court that he has been bothered by Mr. Meyes so he had difficulty in getting the names of the jurors.

Mr. Atkins: Your Honor, may I have just a moment at this time to talk to my two clients?

The Court: Yes, you may.

Mr. Atkins: May we approach the bench again, your Honor? I dislike this procedure.

The Court: Very well.

BENCH DISCUSSION BETWEEN COURT, COUNSEL AND DEFENDANTS

(The following proceedings took place at the bench out of the hearing of the prospective jurors.)

Defendant Meyes: If I might say this to the Judge, now.

[fol. 26] Mr. Carr: If your Honor please, I'm going to suggest that this matter be held in the absence of the jury in open court. It appears that the defendants have a tendency to raise their voices in speaking, and I am going to ask

not only those presently in the box but the prospective jurors be taken out of the courtroom and these proceedings conducted in open court or at the bench as your Honor sees fit.

The Court: I have noticed that at least Meyes raises his voice so that the jurors—at least those in the box—should be able to hear what he says even when he is talking to counsel.

Mr. Atkins: Your Honor, I have discussed the matter with both—may the record show that Mr. Douglas and Mr. Meyes are both here present at this conference. I have discussed with them the fact that we will pick a jury and, perhaps, get a continuance until tomorrow morning or some reasonable continuance after the picking of the jury, in order to help Mr. Meyes and Mr. Douglas and feeling that I will do my best to be as prepared as possible under the circumstances, but Mr. Meyes has indicated to me that he does not believe it can be done. He does not believe I am prepared now and he does not believe I can get prepared because of the voluminous records of the former trials which I will have to go through, although I have certainly gone through them a little at this point but not sufficiently in my own mind; but [Vol. 27] he does not believe it can be done and he states to me, frankly, that he will continue to prevent me from defending him throughout the trial.

Now, is that correct, Mr. Meyes?

Defendant Meyes: May I say this, Your Honor? Now.

The Court: The question is was that a correct statement your counsel made?

Defendant Meyes: What statement was that?

Mr. Atkins: That you would continue to heckle me and prevent me from defending you, that you did not want me to defend you throughout this trial.

Defendant Meyes: Well, you aren't prepared to defend me.

The Court: Is that a correct statement?

Defendant Meyes: Your Honor, he is not prepared to defend me.

The Court: Is that a correct statement?

Defendant Meyes: That he isn't prepared.

The Court: No. That he said you would continue to heckle him throughout the trial.

Defendant Meyes: I will continue to voice my objections

to his manner of trying to defend me because he is not properly prepared to defend me.

The Court: All right. Now, frankly, the prior trials concerned a murder case of which you are not now concerned. [fol. 28] It is true that in that case, or those two trials, there was some evidence relating to some of these offenses, alleged offenses and the amount of testimony in those transcripts is relatively small. It does not mean that a man has to go through those entire transcripts.

Now, I see no reason why Mr. Atkinson cannot represent you. We will proceed and he is entitled to proceed without interruption. You cannot expect any lawyer to do a good job if the client is going to continue to harass him.

Now, I might suggest that if we do not have order in the courtroom, we do have means to maintain order. Now, I do not like to be forced to use those means, and that may be so much as to strap somebody to a chair that is anchored to the floor. It might also mean a gag. Now, those are remedies that I do not like to be forced to use, but I will use them if it becomes necessary.

Mr. Meyes: Your Honor, may I say this? Now, in fairness to the Court, sir, when this thing first started now, we knew that Mr. Atkinson would not be ready to go to trial. He only come up there to see us twice. Now, people have testified since the first trial here in your case, in your court here, they have given testimony at this other trial that they didn't give at the first trial in your courtroom here, and now, I have talked with Federal Bureau of Investigation, and they have assured me that they were looking into these [fol. 29] fake and phony robberies that Sergeant Bitterhoff has brought about, has induced these people to testify.

Now, one thing in particular that I asked Mr. Atkinson to check on when this Fanny Tabbs had —

The Court: Please lower your voice.

Defendant Meyes: — when this Fanny Tabbs had identified me as being the man who had robbed her she said she met me in 1940. In 1940 the FBI files showed I was in St. Louis, Missouri. She said the last time she saw me was five years ago. I was in prison. I asked Mr. Atkinson to check these things out. He hasn't had the opportunity to check a lot of these things out, and I know that Mr. Atkinson has not had the time to properly prepare this case. He has not

had the time in order to give me a fair trial, your Honor. He can't do it because he hasn't had the time.

Mr. Atkins: Your Honor, may I say this: I have done a certain amount of preparation in this case. I have done my best to give to it the time that I can. It is my opinion that I do not and have not had enough time devoted to this case to adequately prepare me for trial. That is my personal feeling on this case, your Honor. That is why I made motions for continuance this morning, amongst other reasons stated, but besides that, I feel I would like one. Now, that is not to say that I have done nothing in preparation. I have prepared this case; I have done a certain amount of preparation. [fol. 30] I do not think for this kind of trial it is adequate.

Mr. Carr: I would like the record to show this in reply to what has been said so far. On the previous cases, I have reference to the first trial on the murder charge and the second trial on the murder charge, the defendant Moyes was represented by Mr. Breckenridge, a member of the Public Defender's office. Mr. Atkinson is a member of the same public defender's office that Mr. Breckenridge is concerned, and I am hazarding a guess, but I think it is a reasonable guess, there has been some discussion between Mr. Breckenridge and Mr. Atkinson concerning the cases that went on before and the robbery evidence that was put on before. So, it is not a matter of not total preparation.

Mr. Atkins: May I interrupt for a minute?

Mr. Carr: Pardon me just a moment, please. The next thing is this: The defendants were arraigned on this present information. The date of the arraignment, your Honor.

The Court: Is August 21st.

Mr. Carr: On August 21st, on that day or shortly thereafter the Public Defender's office of this county was appointed to represent them in these matters. Now, this is over 30 days which have elapsed since that time and counsel came in at the last day—that is the date of trial—and made [fol. 31] his motion for a continuance on the matter.

We have one full page of subpoenas. I have not counted the number of witnesses involved in here under subpoena, and there are about four or five on one other page. These witnesses are difficult to get in here. Most of them are

working people, and they are being taken away from their work.

Defendant Meyes: Bookmakers and gamblers, too.

Mr. Carr: They are being taken away from their work coming to court on the subpoenas.

Again, I am saying that insofar as the defendant Meyes was concerned, he has made numerous statements, which on their very face are false and untrue, to a newspaper, in particular, the L. A. Tribune. All of this talk that he has about the FBI and so on and so forth appears to be for no other purpose than—to use a common phrase—to grandstand here in the courtroom for the edification of that newspaper.

Mr. Douglas: Your Honor, I request the motion to obtain private counsel due to the fact that I don't think counsel is ready to represent me myself, and I talked to Mr. Brennan yesterday just for a short time, and he told me that he would be back up to see me later on this evening or tomorrow and that is why that I asked for the continuance, and I think that I should be granted that permission to obtain private counsel to represent me.

[fol. 32] Mr. Carr: Securing counsel the day before the trial does not show a due diligence on the part of an accused to secure counsel.

Defendant Douglas: Well at the time I explained to Mr. Atkinson—I talked to him twice since I've been here and we have spent no more than 10 minutes at each session—I explained to him that my mother was in the hospital and she was going to have an operation, and at the time I did not have the money to obtain a private counsel until I got means of obtaining one; then I could do so; and I talked to one yesterday, and Mr. Brennan and I have the means to obtain a private counsel now.

The Court: Well, the matter shall go on and—

Mr. Atkins: Your Honor, could I suggest that after picking the jury there might be a certain reasonable amount of time wherein we could continue?

The Court: If the jury is picked today, we will take a continuance until tomorrow morning. I'm not going to have any more interruptions. I do not want to use stringent measures, but if I am forced to, I will.

Defendant Meyes: Your Honor, just one last thing, if you please. These things that I have said up here now, Mr. Joe

Carr casts suspicion or doubt upon the Federal Bureau of Investigation talking to me about the violation of my constitutional and my civil rights. Well, that can very easily be verified, and I, they know there is definitely collusion [fol. 33] between the prosecuting witnesses and the police department in order to get us into the penitentiary for a longer period as they can. Now, Mr. Atkinson talked with us last night about ten or fifteen minutes, and he has only been to see me twice.

Mr. Atkins: Let's keep the record straight, Mr. Meyes.
Defendant Meyes: Fifteen or twenty minutes.

Mr. Atkins: It was at least an hour or an hour and a half.

Defendant Meyes: I can't remember. I just left court.

The Court: We will proceed.

Defendant Meyes: I just left court now and he told me that he had never read the transcripts.

The Court: All right.

Mr. Meyes: Your Honor, in fairness.

The Court: We are going to go ahead and we are going to pick the jury and then - if I have any more interruptions.

Defendant Meyes: If I get convicted, Mr. Atkinson doesn't do the time. I do the time.

The Court: We shall proceed with the trial of this case.

Defendant Meyes: Well, your Honor, he is doing it against my wishes.

The Court: The whole trial, I have to assume, is against [fol. 34] your wishes. If I were a defendant, I would think so.

Defendant Meyes: I want to have my defense properly prepared.

The Court: We will proceed to pick a jury and we will not have any more interruptions. Otherwise I will have to ask the bailiffs to get the necessary equipment in here so that we can proceed.

Defendant Meyes: Well, you might as well get them, your Honor.

IMPANELLING OF JURY

(The following proceedings were held in open court in the presence and hearing of the prospective jurors.)

The Court: All right, call the next juror.

The Clerk: Allen Hurt. The first name is spelled A-l-l-e-n; last name, H-u-r-t.

Sheppard M as in Mary Moore. First name is spelled S-h-e-p-p-a-r-d; last name M-o-o-r-e.

Mrs. Myrtle E. Hudnell, H-u-d-n-e-l-l.

Mrs. Florence C. Blight, B-l-i-g-h-t.

Mrs. Vera Nelson, N-e-l-s-o-n.

Mrs. Bertha A. Lombard, L-o-m-b-a-r-d.

Donald A. Nolan, N-o-l-a-n.

The Court: I will ask all of the prospective jurors to pay close attention to the questions that are asked of the jurors now seated in the jury box. If there are any vacant seats up forward, please fill them up. The acoustics in this [fol. 5] courtroom are very bad. I will ask you all to pay close attention to the questions that are asked of the jurors now seated in the jury box because if any of those jurors are excused and you are asked to replace them, the first question that will be asked will be whether or not you have heard all the questions, and the second question that will be asked is whether or not your answers to the general questions would be any different than the answers given by those who precede you.

In a trial of this matter each side is entitled to a fair and unbiased and unprejudiced consideration of each juror. If there is any fact or any reason why anyone of you might be biased or disqualified, you should disclose such fact or such reason during the examination. It is your duty to do so. The law in fairness to both sides assumes or presumes that a person is biased in certain situations when they probably would not be biased in fact.

This case, as you know, is a criminal case. The People of the State of California are the plaintiff. The People are represented by Joseph Carr, Deputy District Attorney. There are two defendants in this case. The first defendant is William Douglas. Will you rise, Mr. Douglas, so the jurors may see you? Face both groups of jurors. You may be seated. Thank you.

The second defendant is Bennie Will Meyes. Will you rise, Mr. Meyes and face both groups. All right, Mr. Meyes [fol. 36] does not wish to rise.

Both of the defendants are represented by their attorney, Norman R. Atkinson. Will you rise, Mr. Atkinson.

The following persons probably will be witnesses in this proceeding insofar as I can tell from the files:

Sergeant Bitterhoff, S. O. Eastenson, E. D. Eldridge, Fanny Tubbs, Mathe Smith, M. C. Smith, Janie Mae Booker, Frank Stevenson, Harold Coleman, John H. Cook, Henry Carroll, Wyatt Ford, Aaron Hatch, Walter Payne, Moses Forrest, Jim Dindlap, and Louise Adams.

Of course, there probably will be others, but we have no way of knowing who they may be.

Have you ever had any previous acquaintance with any of the persons who have been introduced or whose names have been read to you?

In this case the defendants are jointly charged with nine counts, I think it is.

Mr. Carr: Thirteen, your Honor.

The Court: A total of 13 Counts. They are charged in Count 1 with robbery on or about October 19, 1958 of Fanny Tubbs, approximately \$129. And, you understand, to all these charges the defendants have entered a plea of not guilty.

On Count 2 they are charged with robbery on or about October 10th of Mathe Smith, approximately \$80.

[fol. 37] Also on October 10th, robbery, M. C. Smith, \$149.

On September 24th, 1958, robbery of Janie Mae Booker, \$140.

On August 16, 1958, robbery, Frank Stevenson, \$130.

On July 25, 1958, Henry Carroll, a wallet and contents of the value of \$87.

On July--this is on Count 7--the charge is that on or about July 25th, committed an assault with intent to commit murder in violation of Section 217, and it is alleged that the assault was on Henry Carroll.

On July 25th, in Count 8, it is alleged robbery, the person alleged to have been robbed is Aaron Hatch. The contents of the wallet total value and contents \$7.

Count 9 charges robbery, the date is alleged to be August

July 21, 1958. The victim is alleged to be Matt Karcus; the amount is alleged to be in excess of \$115.

Count 10, the accusation is robbery. The date is alleged to be July 21, 1958. The alleged victim is alleged to be Jim Dunlap, and the amount, his wallet and contents of the value of \$10.

Count 11, the date is alleged to be July 21; the crime is alleged to be assault with a deadly weapon; the victim is [fol. 38] alleged to be Jim Dunlap.

Count 12, the crime is alleged to be assault with a deadly weapon; the date October 10, 1958; and the alleged victim Mathe Smith.

In Count 13 the crime is alleged to be robbery. The date is alleged to be June 29, 1958. The victim, Jamie Mae Booker, and the value is personal property and money in excess of \$100.

Insofar as you know have you ever read or heard about the case?

Have you ever been involved in a similar case either as a witness, a juror or a victim?

Are you related to anyone in the District Attorney's office or the Public Defender's office or in any other law enforcement agency? When I say related, I mean immediate relationship, the first degree.

Do the charges by their nature cause any of you to have any prejudices or opinions which might influence you one way or another if you are chosen to act as trial jurors?

At the conclusion of the case it will be my duty as Judge to instruct you concerning the law applicable to the case and it will be your duty as jurors to follow the law as I shall state it to you. As you know, the function of the jury is to try the issues of the facts that are presented by the allegations in the Information and the defendants' plea of not [fol. 39] guilty. This duty should be performed unclouded by pity for the defendants or by passion or prejudice against them. You must not permit yourselves to be biased against the defendants because of the fact that they have been arrested, for this offense or because an Information has been filed against them or because they have been brought before the Court to stand trial. None of these facts is evidence of guilt and you are not permitted to infer or to

you may be satisfied of all of them, that they are more likely to be true than the others.

You are to be satisfied, however, by the evidence introduced in this trial and the facts as stated I leave for the jury.

Now, after this, the evidence of the deed I will instruct you to consider, that I have said to the presumption of a woman married all "ought" and the "burden of proof," but I will not this to your satisfaction. A defendant in a criminal action is presumed to be innocent until the contrary is proved and refusal of a reasonable doubt. Whether his guilt is satisfactorily shown, he is said to be acquitted; but the effect of this presumption is only to place upon the state the burden of proving a man guilty beyond a reasonable doubt, and when a reasonable doubt will be further doubt I fear you along with the other instructions.

If you are satisfied on the evidence introduced in this case, will you be satisfied with the instructions I have read and given the jury? I will read the instructions of the Court in the light of that presumption of innocence and give the defendants the benefit of it.

The Court is satisfied, and concludes that you can and will give both the People and the defendants a fair and impartial trial in this matter.

Will you base your verdict only upon the evidence and the instructions of the Court and consider nothing else in your deliberations?

All right, Mr. Atkinson, you may retire.

Mr. Atkinson: Obey. EXCELLENT WITNESSES AND OTHER
FURTHER.

Mr. Atkinson: Your Honor, before I can retire the jury may I read the Court for the purpose of withdrawing the jury from the trial and then I can retire the jury during of the jury?

Mr. Carr: I would like your Honor, if you will, please, to take that motion under advisement. I would like to be heard, and I think that the matters that have to be said in opposition to that, in fairness to both sides, would be best addressed to the Court out of the presence of the jury.

The Court: All right. Now, just as a matter of convenience, how long do you think that may take?

Mr. Carr: You heard that.

The Court: Just the consideration of that matter.

Mr. Carr: I would say inside of five minutes.

The Court: Well, all right. Let's take a recess at this [fol. 41] time anyway. There are quite a few jurors here. I think we better. Then we have another matter to call. We better take a twenty minute recess at this time and may I suggest that the jurors that are now seated in the jury box may use the jury room which is through this door and then to your left and up the stairs. The jurors who have not been called yet can go out in the hallway. We will take a twenty minute recess as far as the jury is concerned. Otherwise the court is in session.

(The jurors withdrew from the courtroom.)

(The following proceedings took place at the bench out of the presence and hearing of the prospective jurors.)

The Court: Proceed.

Mr. Carr: Judge, that is a motion that effects the substantial rights of the defendants. It should be done in open court or in the presence of the defendant.

The Court: The only thing I have in mind if you have anything to say concerning the witnesses. That is why I cannot imagine anything. We better proceed in open court then.

(The following proceedings took place in open court out of the presence and hearing of the prospective jurors.)

Mr. Carr: I wish to take up counsel's motion at this time.

The Court: Yes.

Mr. Carr: I assume there are no members of the prospective [fol. 42] five panel in the courtroom.

The Court: No. I watched them as they went out.

Mr. Carr: In opposition to that motion I would like to advise your Honor as to the reason for our opposition on this sequestration of witnesses. It is not an absolute right on the part of a defendant but a matter within the sound discretion of the Court. First as to the facilities which are afforded witnesses who wait out in the hall, your Honor, there are practically none. There are some benches, none directly outside of this courtroom. The closest, I would estimate, would be about 25 feet away outside of the corridor and down. There is a bench out there. We have found this: First, let me indicate for the record the number of witnesses

There are 17 witnesses that are under subpoena. There possibly will be others. We would, if the Court please, that the witnesses wait outside and then they start wandering around. If you bring them out there, there is nothing there in the corridors to hold their attention. They start wandering around and finally they wander far away, and, when they are needed, they cannot be found. There is time consumed. At the conclusion of one witness on the witness stand, by the time that that one leaves and the bailiff goes out and hunts up the other, there is some time involved, but that is of no primary importance to the Court insofar as assuring to the defendant a fair trial is concerned; but, first, [Hd. 31] only the idea of sequestration of witnesses, your Honor, is this: So that witnesses in the courtroom do not hear and be impressed by what a witness is testifying to so that there is either a conscious or an unconscious attempt to recolor the testimony. That is the basic reason for that.

We say that the rule fails when the reason fails and, in this particular case, that appears to be of the greatest importance.

Let us examine the counts that we have here. In the first count there is alleged a victim by the name of Fanny Tubbs. Fanny Tubbs testified at the second murder trial and she was examined, cross-examined very extensively by the attorneys for the two months. Available to them at that time in connection with their cross-examination was the fact that Fanny Tubbs had testified insofar as that robbery was concerned in the matter of People versus Jackson. She testified at the preliminary examination; she testified in the trial of the Jackson matter; and available to the defendants' counsel, indeed, in the second murder trial, were the transcripts of Fanny Tubbs' testimony in the preliminary and the trial of the Jackson matter; and there was a daily find in the second murder trial and I recognize among the pile of transcripts, and counsel has here the testimony of Fanny Tubbs. So, she was given a searching cross-examination, and then appears to be no reason why she should be se [Hd. 34] questrated ultimately, out of sheer boredom, required to enter the hall.

Let's go to the next witness, Matie Smith. Matie Smith testified in the second murder trial of these two defendants, was examined and cross-examined extensively, and as to the

Jackson matter, if memory serves me correctly. I did not try it—but I believe he testified in that matter both at the preliminary and at the trial.

Now, as to Court J. M. C. Smith, I do not know. I have no recollection of him testifying, hearing him testify at the Jackson matter, and my recollection at the moment fails me. I do not know whether M. C. Smith testified at the murder trial or not.

Now, we come to Jamie Mae Booker. Jamie Mae Booker well, first, as to going back to Fanny Tubbs, she testified at the preliminary examination in this matter that is before your Honor as did Mathe Smith and as did M. C. Smith. Jamie Mae Booker did not testify at either of the murder trials. She did testify in the preliminary examination in this matter.

Frank Stevenson testified in both of the murder trials and was cross examined quite extensively in both of those matters. He testified at the preliminary examination of this matter now before you.

Henry Carroll testified before the Grand Jury in the murder trial and in both of the other trials, of the murder [Vol. 45] trials. He testified in the preliminary examination of this matter and was cross examined extensively except, of course, when he appeared before the Grand Jury.

Aaron Hotal testified only at the last murder trial and was cross examined extensively. He testified at the preliminary hearing in this matter.

Moses Forrest testified—

The court reporter has indicated the presence of a prospective juror.

The Court: Are you a juror?

A Voice: Yes.

The Court: Will you remain outside until this motion is over? Are there any other jurors? Please remain outside until the motion is concluded.

Mr. Carr: Forrest testified at the second murder trial. That I am positive. I have no recollection as to the first one. Then he also testified at the preliminary examination in this matter.

Mr. Dunlap testified at the preliminary examination in this matter.

Mathe Smith I have covered and Jane Booker.

If your Honor please, it appears to me that the sequestration of witnesses will serve no purpose other than to delay these proceedings and cause witnesses to disappear, because, as has been previously indicated, this trial could well take a week, and it is contrary to human nature, and particularly human nature of some of the witnesses that we have here, to expect them to idly sit back day after day after day in the hall without wandering around, and unfortunately, it has always been my misfortune that when I want a witness, he can not immediately be found out in the hall. When I do want him, he is never present.

The Court: Incidentally, why shouldn't we make an order now excluding witnesses until tomorrow morning?

Mr. Carr: Well, we can do that, if your Honor please. However, I would like to call the witnesses so that we can be sure that they understand the order. At some previous hearings we have had the experience that when somebody says "excluded," then you have to start searching around for them, if you will pardon.

The Court: Why not solve that much of it anyway?

Mr. Atkins: May I suggest that before they are excluded and toward the view that perhaps your Honor would grant the defense motion that they should be instructed that there are many, many other courtrooms in this building that they might find a great deal of entertainment in so they do not have to wander around the hall if they sit in other courtrooms in other trials beside this one.

Mr. Carr: That is the problem, your Honor. I forgot to mention it. Thank you, counsel. If coming back about in the hall they seek entertainment in other courtrooms and then when are they when we need them.

Hol. 471 The Court: Well, let's.

Mr. Carr: May I check the witnesses?

The Court: Yes.

Mr. Carr: Can we wait before you make your order until the rest of them get back in here?

The Court: All right. Mr. Atkinson, do you have anything more?

Mr. Atkins: Well, I want to reply to Mr. Carr's.

The Court: Yes. That is what I am asking for.

Mr. Atkins: Yes, thank you. The first thing that I would like to say on this matter is that I wonder why Mr. Carr

spent close to ten minutes in discussing this motion. I am sure it is not out of pure solicitude for the witnesses, and may I say this, your Honor: I have in other cases requested that witnesses be excluded. I have done that about four or five times; but I have not yet in my career had a case that deserved or needed and demanded that witnesses be excluded more than this case does and, for the reasons which Mr. Carr points out, namely, that there has been two former trials, that there are a great number of witnesses—I see they are present here in court, and I will not be more explicit than I will have to be—but there are things that are common to all of these witnesses which I do not believe would help matters if they were all present to hear each other testify.

The Court: Well, all right.

[fol. 48] Mr. Atkins: May I just add one thing, your Honor? There may be things touched on in voir dire of the jury which the witnesses, I would prefer to have the witnesses excused even during the voir dire.

The Court: I was going to solve that by excusing the witnesses for today.

Now, have all the witnesses shown up that have been subpoenaed?

Mr. Carr: I will check, your Honor.

(Mr. Carr checked his witnesses.)

Mr. Carr: Not all of them are here yet, your Honor.

The Court: Well, let me—

Mr. Carr: They have been here, your Honor.

The Court: Fanny Tubbs.

Mr. Carr: Louise Adams.

The Court: Just the two of them?

Mr. Carr: Moses Forrest. Those three.

The Court: All right. All witnesses that have been subpoenaed in this case except Fanny Tubbs, Louise Adams and Moses Forrest—and if they were here I would include them, but they are not here—so all witnesses except those three are excused until tomorrow morning and you are instructed to return to this courtroom tomorrow morning at 9:30. You will check in with the clerk in this courtroom and at that time you will be instructed to sit in the adjoining courtroom. I will make an order sequestering the

[fol. 49] witnesses, so you will wait in an adjoining court room. What courtroom is that numbered, this next one?

Mr. Carr: 105 is next door, your Honor.

The Court: All right. I think the best place to wait is in department 105, but check into this courtroom with the clerk at 9:30 tomorrow morning.

Mr. Carr: One other thing. As these witnesses leave, if you run into Fanny Tulbs or Moses Forrest or Louise Adams, tell them to come into the courtroom. Tell them what has happened to you so the Court can order them to come back.

The Court: Thank you, Mr. Carr.

Mr. Atkins: Your Honor, may I request one more thing?

The Court: All right.

Mr. Atkins: Mr. Eastenson and the police officers who are to be witnesses, I would request that they also be excluded. I am informed that Mr. Eastenson will be a witness and, in this case, your Honor, I don't like to do it, but I believe that in this case they, too, should be excluded as the other witnesses are.

The Court: All except one officer.

Mr. Atkins: Well, I do not care if Mr. Carr has an assistant, but I do not want the assistant to be a witness. I request in all due respect, your Honor, that he not be a witness. [fol. 50] Mr. Carr: The statute provides, your Honor, that I have the right of the investigating officer at the counsel table. It does not say that that investigating officer cannot be a witness in the case. I ask the privilege as made by the statute which counsel seeks to overlook either consciously or unconsciously. I'm going to ask that I have the presence of the investigating officer with me. Insofar as any other officers are concerned, I have no objection in view of your Honor's previous order that they be likewise.

The Court: The investigating officer may remain and may be a witness, if necessary.

Mr. Atkins: Your Honor, my only statement on that score is this: I do not want to reiterate it vehemently. I am not trying to go behind your ruling, but I do think that you if Mr. Carr has the right that your discretion be exercised in this case as a special case, that if the investigating officer be a witness or prospective witness, that he be excluded in this case. I do not—I would not ask that in any other—

The Court: He is entitled to some help the same as you are. I understand your position. That will be the ruling, that the investigating officer may remain.

All right, we will still have about ten minutes for our recess. We better take it.

Mr. Atkins: Your Honor, I have to appear at 106 on a [fol. 51] P and S. I may be a little late.

The Court: Very well.

(Recess taken.)

The Court: Let the record show all jurors present, defendants and all counsel.

Mr. Carr: In regard to the matters concerning the witnesses, if your Honor please, those witnesses that were previously not here have come in, and would you care to make the order? I will call them now. Mrs. Tubbs, please stand, and Louise Adams and Moses Forrest.

The Court: All right. The three witnesses mentioned are excused until tomorrow morning, and you are instructed to return to this courtroom without any further order, notice or subpoena tomorrow morning at 9:30. Be sure and check in with the clerk at 9:30 tomorrow morning, and then you will be excused to go to the adjoining courtroom and wait until you are called as a witness. There has been an order excluding all witnesses from the trial. You are now excused for today.

Mr. Carr: That order applies to witnesses for the prosecution and defense both, does it, your Honor?

The Court: Oh, certainly. In case there has been any misunderstanding, if there are any witnesses here for either the prosecution or the defense, for either side.

Mr. Atkins: Your Honor, that includes police officers with the exception of the investigating officer?

[fol. 52] The Court: That is correct. You are ordered excluded except for the investigating officer, and you will wait in the adjoining courtroom, but all witnesses are excused from attendance further today, and you are ordered to return tomorrow morning at 9:30.

All right, we just started on the jury examination, Mr. Atkinson.

IMPANELLING OF JURY

Mr. Atkins: Yes your Honor. I did not get the name of the second juror in the front row, Ma'am.

Mrs. Hudnell: Myrtle E. Hudnell.

Mr. Atkins: How do you spell the last name?

Mrs. Hudnell: H-u-d-n-e-l-l.

Mr. Atkins: Mrs?

Mrs. Hudnell: Yes.

Mr. Atkins: Ladies and gentlemen of the jury, I am the defense lawyer in this case, and at this time I am privileged to ask you questions about facts which touch upon your qualifications which I think are important to me in determining whether you will be a proper juror in this case.

Your Honor, may I go over there?

The Court: Yes. I might add that in the argument or examination it is proper for either counsel to be in this area out here, but during the examination of the witnesses, they do not come beyond the edge of counsel table unless they have to show a document or an exhibit to a witness.

[fol. 53] Mr. Atkins: Thank you, your Honor.

The Court: Incidentally, that chair seems to be in your way. That is not supposed to be there. We may have an extra reporter this afternoon, here for experience getting ready for an examination.

Mr. Atkins: May I ask their addresses, your Honor?

The Court: You may.

Mr. Atkins: Mr. Schnitzer, what is your address?

Mr. Schnitzer: 1822 Holmby, H-o-l-m-b-y Avenue, Los Angeles 25.

Mr. Atkins: Mrs. McVay?

Mrs. McVay: 1674 Lucille, L-u-c-i-l-l-e, Avenue, L. A. 26.

Mr. Atkins: That was 1674 East 11th?

Mrs. McVay: No., Lucille, L-u-c-i-l-l-e.

Mr. Atkins: Mrs. Traam?

Mrs. Traam: 5208 Virginia Avenue, Los Angeles.

Mr. Atkins: Virginia Avenue?

Mrs. Traam: Avenue, L. A. 29.

Mr. Atkins: Mr. Rhys?

Mr. Rhys: 5002 La Roda.

Mr. Atkins: La Roda?

Mr. Rhys: Yes, L-a R-o-d-a.

Mr. Atkins: That is in Los Angeles?

Mr. Rhys: That is in Inglewood.

[fol. 54] Mr. Atkins: Inglewood?

Mr. Rhys: Eagle Rock.

Mr. Atkins: Mr. Peterson?

Mr. Peterson: 2445 Via Lucia, Montebello.

Mr. Atkins: Mr. Hurt?

Mr. Hurt: 3117 West Vernon, Los Angeles.

Mr. Atkins: Mr. Nolan?

Mr. Nolan: 23313 Anchor.

Mr. Atkins: Anchor?

Mr. Nolan: Anchor, A-n-c-h-o-r, Wilmington.

Mr. Atkins: Mrs. Lombard?

Mrs. Lombard: 5272 Hollywood Boulevard.

Mr. Atkins: Mrs. Nelson?

Mrs. Nelson: I spoke to the Sheriff.

Mr. Atkins: Excuse me. Would you speak up a little louder, please?

Mrs. Nelson: I spoke to the Sheriff just preceding coming in here, and I finished my time today. I wish to be excused.

Mr. Atkins: Your Honor, did you hear that?

The Court: No, I didn't hear that.

Mr. Atkins: Mrs. Nelson says she has finished her calendar month and wishes to be excused.

The Court: Oh, you have finished your—

Mrs. Nelson: Calendar month today. This is my last day.

[fol. 55] The Court: This is your last day?

Mrs. Nelson: My last day.

The Court: This case may last a week. You cannot serve any more?

Mrs. Nelson: No, I can't.

The Court: Any objection to dismissing her?

Mr. Atkins: No objection, your Honor.

Mr. Carr: No objection, your Honor.

The Court: Very well. I will excuse you then, Mrs. Nelson.

Mrs. Nelson: Shall I leave now?

The Court: Yes, you may.

Call another juror.

The Clerk: Mrs. Anne B. as in boy, Reuter, R-e-u-t-e-r.

The Court: Mrs. Reuter, have you heard all the questions I asked the other jurors?

Mrs. Reuter: Yes, I did.

The Court: If I repeated the questions, would your answers be the same?

Mrs. Renter: Yes.

The Court: All right. Mr. Atkinson.

Mr. Atkins: What is your address, Ma'am?

Mrs. Renter: 14102 South Menlo, Gardena.

Mr. Atkins: Mrs. Blight?

Mrs. Blight: 1201 South Windsor, Los Angeles 19.

Mr. Atkins: Mrs. Hudnell?

[fol. 56] Mrs. Hudnell: 2805 Hill Drive, L. A. 18.

Mr. Atkins: Mr. Moore?

Mr. Moore: 872 East 47th Street.

Mr. Atkins: East 47th?

Mr. Moore: That's right.

Mr. Atkins: L. A.?

Mr. Moore: That's right.

Mr. Atkins: Now, as his Honor, Judge Rhone, has stated to you, there are 13 counts in the Information against—in other words, 13 accusations of crime against these two defendants. Now, some of them are robbery; some of them are assault with intent to commit murder and that sort of thing. Now, let me ask in general each of you does the fact that there are 13 serious accusations—in other words, a good number of serious accusations—does that make you think that, perhaps, there is something in it? In other words, where there is smoke there is fire and if there are a good number of accusations that, perhaps, there must be something to it after all? Now, don't answer out now. I will just go down the line.

The Court: Pardon me, Mr. Atkinson. Are there any persons in the courtroom who are subpoenaed as witnesses in this case? Raise your hands if you are. All right, it seemed to me we had two more people than I thought we ought to have. Go ahead, Mr. Atkinson.

Mr. Atkins: Aren't these people witnesses, your Honor?

[fol. 57] The Court: Well, they say they are not. Are any of the persons still in the courtroom witnesses that have been subpoenaed as witnesses?

Mr. Carr: They are not in the instant case, your Honor, some of them are defendants in other cases. Some are witnesses in other cases.

* The Court: All right. I see.

Mr. Atkins: Do you all remember the question I asked? I will just go right down the line. You just say yes or no.

Mr. Schnitzer, how do you feel about that?

Mr. Schnitzer: It wouldn't prejudice me in the slightest.

Mr. Atkins: By that you mean you would still be able to say, "Well, let the prosecution prove that there are 13 counts." Is that your attitude?

Mr. Schnitzer: That's right.

Mr. Atkins: Mrs. McVay, what is your attitude?

Mrs. McVay: I wouldn't be prejudiced.

Mr. Atkins: Pardon me?

Mrs. McVay: I wouldn't be prejudiced.

Mr. Atkins: What do you mean by that?

Mrs. McVay: Well, until I heard the evidence I wouldn't judge—

Mr. Atkins: The fact there are 13 does not indicate to you one way or the other. There might be 13 bun counts.

[fol. 58] Mrs. McVay: That's right.

Mr. Atkins: As far as you are concerned, you would let the evidence speak for itself?

Mrs. McVay: Speak for itself.

Mr. Atkins: You would scrutinize and look into the evidence as to each count, letting each count stand on its own, is that correct?

Mrs. McVay: That's right.

Mr. Atkins: Is that how you feel about the matter?

Mr. McVay: Yes.

Mr. Atkins: Mrs. Traun, how do you feel?

Mrs. Traun: I feel the same way.

Mr. Atkins: Mr. Rhys?

Mr. Rhys: Judge it by the evidence.

Mr. Atkins: Mr. Peterson?

Mr. Peterson: In each case have to judge it by the evidence.

Mr. Atkins: And the fact that there are multiple counts, 13 counts altogether, this does not indicate to you that maybe there is something in this or there wouldn't be 13 counts?

Mr. Peterson: It doesn't make any difference. Have to be shown that the evidence in each case—

Mr. Atkins: In other words, whether there are 13 or 200

it still has to be proven to your satisfaction that these things were done.

[fol. 59] Mr. Peterson: That's right.

Mr. Atkins: Mr. Hurt?

Mr. Hurt: I think the same.

Mr. Atkins: Do you have any hesitancy about—do you think that maybe there is something in it when you have 13 counts, maybe, possibly—

Mr. Hurt: Possibly in a court of law doesn't mean anything.

Mr. Atkins: You have to scrutinize the evidence.

Mr. Hurt: Yes.

Mr. Atkins: Mr. Nolan?

Mr. Nolan: I think the same.

Mr. Atkins: Mrs. Lombard, how do you—

Mrs. Lombard: Counts make no difference.

Mr. Atkins: Mrs. Reuter?

Mrs. Reuter: That's right.

Mr. Atkins: Same way?

Mrs. Reuter: The same way. Yes, sir.

Mr. Atkins: Mrs. Blight?

Mrs. Blight: I feel the same way.

Mr. Atkins: Mrs. Hudnell?

Mrs. Hudnell: Same.

Mr. Atkins: Pardon?

Mrs. Hudnell: The evidence would have to be proven.

Mr. Atkins: Mr. Moore?

Mr. Moore: I think it would have to be proven, too.

[fol. 60] Mr. Atkins: In other words, you would all agree that no matter how many counts there are, the fact that these counts exist and are there and accuse the two defendants, of 13 or a 100, the only thing that you are really interested in is what the evidence proves coming from that witness stand; is that correct? You are all of that mind? And the fact that there are multiple counts means nothing to you insofar as that fact stands by itself?

Now, I will ask you, this in general and you probably won't like my even asking because it probably is foolish, but I will ask it anyway. Does the fact that these two defendants are Negroes have a tendency to make you think maybe Negroes are more apt to commit these crimes than other people? Do any of you have that feeling?

Have any of you heard the name Bennie Meyes before anywhere? Have any of you heard the name Officer Nash before?

Can you visualize yourself—and I will address you all—can you visualize a situation where because of a homicide involving a policeman—that the police force, those involved in that homicide, those police officers involved in that homicide could get themselves so worked up that they would choose to take the vengeance they think should be done to the perpetrators of the homicide into their own hands toward building other cases against those that they feel were responsible for the homicide—

[fol. 61] Mr. Carr: Just a moment.

Mr. Atkins:—and again—just a minute, Mr. Carr—

Mr. Carr: That is a jury speech; not a question.

Mr. Atkins: The question is—

Mr. Carr: Go ahead and finish.

Mr. Atkins: I will go down the line as to each of you and ask your individual opinions on that question.

Mr. Carr: All right. I take it then the speech is concluded.

The Court: I did not know. All right. Go ahead.

Mr. Carr: The speech is concluded?

Mr. Atkins: The speech is not concluded. The question is concluded, Mr. Carr.

Mr. Carr: The speech, I take it, is concluded.

The Court: All right.

Mr. Carr: I am going to object to that, if your Honor please, on the ground it is not a proper question on voir dire. Apparently, counsel is letting his enthusiasm get away with him. He has been reading some books and novels and looking at Perry Mason and so on. We submit the statutes provide the questions that give rise to the challenge for cause, if your Honor please. The question that counsel has propounded has been propounded solely for the sole and exclusive purpose of seeking to influence the jury.

Mr. Atkins: I object to that accusation. Your Honor, I [fol. 62] object to that accusation. That is not a legal statement on Mr. Carr's part. He is also making what he considers to be a grandstand play. I am asking what I think is a legal question to the jury.

The Court: All right. I am going to ask both of you to be quiet. The question is improper. You are assuming.

trying to have the jury make a predetermination. It is not the time to present any evidence to the jury or any theories. The objection is sustained. Proceed.

Mr. Atkins: Your Honor, my question included the words, "Is it possible?"

The Court: I heard that.

Mr. Atkins: The only thing I wanted was to test their attitude.

The Court: I took it into consideration in making the ruling.

Mr. Atkins: Yes, sir.

If it came to your knowledge that one of these defendants had been convicted of a very serious felony in the past, first, I will ask that part. First, would you be able to keep that felony conviction separate and apart from the other defendant in the case? Again I am going to go down the line on it. By that question I mean I am just asking you if you think you would be capable of not letting that conviction taint the other person in any way. In other words, the birds of a feather attitude.

[Vol. 63] The Court: Well, before you do that, I think those who have not sat on a jury case before should understand that a witness may be asked if he has ever been convicted of a felony, and that can be asked only on one basis and that is for the possible impeachment of him as a witness, and that can be the only basis that it can be considered. It can not be considered for any other purpose.

Go ahead, Mr. Atkinson.

Mr. Atkins: Mr. Schmitzer?

Mr. Schmitzer: I am quite sure I would be able to keep it clear in my mind.

Mr. Atkins: Mrs. McVay?

Mrs. McVay: I would.

Mr. Atkins: Mrs. Traut?

Mrs. Traut: I feel the same.

Mr. Atkins: Mr. Rhys?

Mr. Rhys: Yes.

Mr. Atkins: Mr. Peterson?

Mr. Peterson: Yes.

Mr. Atkins: Mr. Hurt?

Mr. Hurt: I don't think it has any effect.

Mr. Atkins: Mr. Nolan?

Mr. Nolan: The same.

Mr. Atkins: Mrs. Lombard?

Mrs. Lombard: Same thing.

Mr. Atkins: Reuter?

[fol. 64] Mrs. Reuter: Same.

Mr. Atkins: Mrs. Blight?

Mrs. Blight: Yes.

Mr. Atkins: Mrs. Hudnell?

Mrs. Hudnell: Yes.

Mr. Atkins: Mr. Moore?

Mr. Moore: Yes.

Mr. Atkins: Now, I will ask the other part of that question. The other part of that question simply is this: As to that person who has suffered that conviction, could you keep that in its proper perspective? In other words, would you let that fact touch and influence you in your determination of the evidence on the crimes alleged that come to you from the witness stand? In other words, would you let that taint your thinking concerning the crimes, the substantive crimes that are alleged in the evidence as to those crimes?

Mr. Carr: Just a moment. We object to that on the ground it is not a proper question. Counsel is asking the jury to prejudge the evidence. The determination of the weight and value to be given the evidence on the substantive offenses charged depends upon the testimony, the weight of credibility to be given each of the witnesses who testify in that regard. Evidence of prior convictions of a felony, insofar as a witness is concerned is, as your Honor pointed out, touches upon the weight and credibility. It is an im-
[fol. 65] peachment matter. I think counsel's question is asking the jury to determine now the weight and credibility the jury will give to the testimony of a witness in regard to a substantive offense and whether or not they would let it touch upon their determination of the substantive offense. Obviously, if a witness who has thus been previously convicted of a felony testifies in regards to the substantive offense—be it either a witness for the prosecution or the defense—the jury has the right to determine the prior conviction of a felony, if any there be, insofar as that witness is concerned in determining the weight and credibility they will give to the testimony of that witness insofar as it touches the substantive offense.

Mr. Atkins: My question was directed and included the word "conviction" of one of the defendants; not by other witnesses. My question included the word "defendant," and I think the question is perfectly proper because the consideration of a previous conviction by a defendant should in no way influence their determination in weighing the evidence that comes in from other prosecution witnesses concerning the substantive crimes. It is that simple.

The Court: The only problem that worried me, in all juries, when a juror is asked whether or not they would consider the testimony of this one or that one any differently, the jury has not seen or heard any testimony. All they can do is speculate on the answer and sometimes they [fol. 66] do not know really what they are answering. I think the question should be reframed so that the jurors can answer it and know how they are answering.

Mr. Atkins: I will try to reframe the question from that point of view, your Honor.

The Court: Bear in mind that when you are asked how you would consider the testimony of anybody, whether it is a defendant or a police officer or anybody else, at this time you have not heard anybody testify and you do not have any idea how you may judge their testimony. I think the question is that at this point would you use the same standard in viewing the testimony of different witnesses. Now, after you hear them testify and see them and their demeanor and the way they answer questions, it may be something else.

All right, go ahead, Mr. Atkinson.

Mr. Atkins: Well, I will try to make it as clear as possible.

The Court: All right.

Mr. Atkins: The question is really very simple. If it came to pass that one of the defendants had been in the past convicted of a felony and that were shown to you and offered for the purpose of impeaching his own credibility, all I am asking you is this: Would you use it for that purpose only and would you be able to keep yourself from allowing that fact to influence you or prejudice you in the [fol. 67] consideration of the evidence offered concerning the crimes which are now alleged the defendant had committed?

Now, I think that question is fairly clear, your Honor.

The Court: All right.

Mr. Carr: Well, if the jurors can answer it, is it clear.

Mr. Atkins: Well, let's see.

Mr. Schnitzer, would you be able to keep your mind clear on that score?

Mr. Schnitzer: I am sure I would.

Mr. Atkins: Mrs. McVay?

Mrs. McVay: I would. Yes.

Mr. Atkins: Mrs. Traun?

Mrs. Traun: Yes.

Mr. Atkins: Mr. Rhys?

Mr. Rhys: Yes.

Mr. Atkins: Mr. Peterson?

Mr. Peterson: Yes.

Mr. Atkins: Mr. Hurt?

Mr. Hurt: Yes.

Mr. Atkins: Mr. Nolan?

Mr. Nolan: Yes.

Mr. Atkins: Mrs. Lombard?

Mrs. Lombard: Yes, if I understand the question.

Mr. Atkins: Well, that is part of the question. Do you [fol. 68] understand it?

Mrs. Lombard: If a person has been convicted on some other charge, you wouldn't hold that against this case that you are hearing now, forgotten about.

Mr. Atkins: That is not quite the import I meant. I will try to clarify it again.

Mrs. Lombard: I just want to be real sure.

Mr. Atkins: The previous conviction as to a defendant is offered by the prosecution to show, to impeach his own credibility when that defendant testified, and it should not be considered as affecting the validity of the proof offered against him on this trial. Would you be able to keep those things separate?

Mrs. Lombard: Yes. Yes, I would. I didn't understand.

Mr. Atkins: Mrs. Reuter, would you?

Mrs. Reuter: Yes, I think I would.

Mr. Atkins: Mrs. Blight?

Mrs. Blight: Yes.

Mr. Atkins: Mrs. Hudnell?

Mrs. Hudnell: Yes.

Mr. Atkins: Mr. Moore?

Mr. Moore: Yes, I would.

Mr. Atkins: This is a simple question now and my last. Do you believe that eyewitnesses to events can be wrong?

[fol. 69] Mr. Carr: Object to that. Did you finish the question, counsel?

Mr. Atkins: Can be wrong, whether it is possible.

Mr. Carr: I object to that, if the Court please, on the ground it is asking the jury to prejudge the evidence in this matter, testimony of various witnesses.

Mr. Atkins: Your Honor, all I want to find out is whether the jurors in the box now are of such mind that they believe every person who sees everything sees it as it really is and whether it is possible that people can be mistaken. That is all. I think that is perfectly proper on voir dire.

The Court: Well, if you asked your question as you made the last part of your argument I would overrule the objection, but I am going to sustain the objection.

I might give you a suggestion about how to reframe it. Before you go ahead I want to dispose of another matter.

(Proceedings were had in an unrelated case.)

Mr. Atkins: Well, I will rephrase the question then at your Honor's suggestion.

Do you believe that it is possible that an eyewitness to an event can make a mistake as to the defendant? In other words, whether it is possible that a person seeing something can then relate it, believe he is telling the truth and be [fol. 70] mistaken?

Mr. Carr: I object to that on the ground, if the Court please, counsel is speaking in terms of possibilities. The jury need not be satisfied beyond any possible doubt, if your Honor please, but beyond a reasonable doubt. Counsel is seeking to inquire as to whether or not the jury have any belief in the infallibility of the human ability of perception and relation. It is an unfair question. Speaking about being possibly mistaken and so on, I do not think that the jury has to go that far. It is a matter of reasonableness on all of the evidence, and we, therefore, object to the question.

The Court: Well, I think that the objection is good. Would you consider your question amended to—

Mr. Atkins: Well, I guess I will have to rephrase it the way Mr. Carr wants it.

The Court: No. One of the jurors stated she cannot hear anything being said. The attorneys have their backs to them; and I gather nobody is speaking too well. Thank you, Mrs. Linn. We appreciate it.

Mr. Atkinson, I think we are going to have to adjourn at this time. We have a meeting of judges this noon, and I'm afraid I cannot start until 2:00 o'clock. We will take the recess at this time. We will reconvene at 2:00 o'clock. All the jurors be back here promptly by 2:00 o'clock.

[fol. 71] (Whereupon at 11:54 a recess was taken until 2:00 o'clock p.m. of the same day.)

[fol. 72] Los Angeles, California, Wednesday, September 30, 1959; 2:00 P.M.

The Court: Let the record show all jurors present, the defendants and all counsel.

Proceed, Mr. Atkinson.

COLLOQUY BETWEEN COURT, COUNSEL AND DEFENDANT

Mr. Atkins: Your Honor, may we approach the bench, please?

The Court: All right.

(The following proceedings were had at the bench outside the hearing of the prospective jurors.)

Mr. Atkins: May the record show that the District Attorney and myself and both defendants are up at the bench.

I have received a note from my two clients. It says, "I, Bennie Meyes, demand that we be given the right to read California Penal Code 987a before the trial proceeds any further."

Mr. Carr: What section is that, counsel?

Mr. Atkins: 987a.

The Court: The section relating to the appointment of counsel.

"Section 987a: The board of supervisors may by ordinance provide that in any case in which counsel is assigned in the superior court to defend a person who is charged therein with a crime and who desires but who is unable to [fol. 73] employ counsel, such counsel, upon recommendation of the Court or a Judge thereof, may receive a reason-

able sum for compensation and for necessary expenses the amount of which shall be determined by the supervisors, to be paid out of the general fund of the county.

"This section shall not apply in any county or city and county in which a public defender is elected or appointed."

Mr. Carr: I believe, your Honor, that there has been an amendment. I think that you will find that in the pocket part.

The Court: Yes, there has.

"In any case in which counsel is assigned in the Superior Court to defend a person who is charged therein with a crime, or is assigned in a Municipal or Justice's Court, or Justice Court as established pursuant to the Municipal and Justice Court Act of 1949, to represent such a person on a preliminary examination in such a court and who desires but who is unable to employ counsel, such counsel, in a county or city and county, in which there is no public defender, or in a case in which the Court finds that because of conflict of interest or other reasons the public defender has properly refused to represent the person accused, shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the Court, to be paid out of the general fund of the county."

[Vol. 74] The other paragraph relates to contracts with reference to persons who are committed to the State Prison.

"Compensation of assigned counsel: The board of supervisors may by contract provide that any public defender duly appointed or elected may charge reasonable fees to the Department of Corrections for representing inmates or prisoners under its control, and the Department of Corrections may upon approval by the Court pay such fees into the county treasury to be placed in the general fund of the county."

Mr. Atkins: Your Honor, may I see the—the defendants wish to examine this section themselves.

The Court: All right.

Mr. Carr: Mr. Atkinson, directing—

Mr. Atkins: Atkins, to keep it—

Mr. Carr: Atkins?

Mr. Atkins: Atkins.

The Court: Atkins?

Mr. Atkins: Yes, your Honor.

The Court: I introduced you as Atkinson.

Mr. Atkins: I didn't notice, your Honor.

Mr. Carr: Well, that is the name I heard. I am sorry.

While your clients are reading this, you are aware that the defendant Meyes is charged with three priors—bur-
[fol. 75] glary and two robbery priors; that they stand denied at the present time.

Mr. Atkins: Yes.

Mr. Carr: Is there any desire on the part of the defendants to admit the—the defendant—to admit the priors outside of the presence of the jury?

Mr. Atkins: None at this time.

Mr. Carr: Fine.

Mr. Atkins: Now, I will discuss it with them, with Mr. Meyes, because it is a proper matter of voir dire, and the jury could have been advised by the Court at the time, advised the jury as to the nature of the charges against them that they also had the priors, although your Honor did wisely refrain from so advising the jury at that time, although it was your prerogative to do so.

Now, may the record also show that both defendants have indicated to me that they refuse to go further with this trial, and at that point the case was called and I did not have a further chance to talk to them about that matter, but it appears that we are still having considerable difficulty, and they still have not accepted me as their counsel and representing them in this trial.

May we have a few minutes to discuss this further, your Honor, because I do not know exactly what is going to happen at this point.

[fol. 76] The Court: You want some time to discuss it with your clients?

Mr. Atkins: Well, they brought up this subject again. I feel compelled to talk it over with them some more. We have discussed it all through this morning's session.

Mr. Douglas: This matter to be brought up is that we stand on our rights to dismiss counsel, and I want the record to show that we have dismissed counsel and—

Mr. Atkins: Wait a minute. Before you do that you should be advised that if at this stage of the game you dis-

miss counsel, you can be forced to proceed with this trial without counsel.

Defendant Meyes: They will do it illegally and we are going to stand mute. We don't have proper legal representation.

Defendant Douglas: That's correct.

Mr. Atkins: Now, let the record show that I am informing them that they have a right to dismiss me as counsel but that I have informed them as to what the outcome of that can be as to them at this stage of the proceeding. I assume I am correct in that.

Defendant Meyes: You have indicated you weren't properly prepared to defend us either. I want the record to show that.

Mr. Atkins: Just a minute. Does your Honor agree with [fol. 77] me that they might be forced to continue the trial without counsel if they dismiss me now? That is my understanding.

The Court: If the defendant dismisses counsel, but by dismissing his counsel he does not have any right for continuance, then he may be required to proceed with the trial without counsel.

Mr. Atkins: All right. May I do this at this time? Both clients having made their intentions known to me that they are dissatisfied with me as their counsel and being stated that they desire to dismiss me, I would at this time move for a continuance on their behalf in order that they may have time to procure other counsel and properly present their case in their behalf.

The Court: I think the motion comes too late, Mr. Atkins. Motion for such a continuance is denied. If you would like a few minutes to—

Defendant Douglas: Look here, he's got to read all this where it says that.

The Court: Mr. Atkins, if you would like a few minutes to discuss this matter with your clients—

Mr. Atkins: I think I better discuss it with them, but I do not think it will do much good.

The Court: Would you like to go in the lockup?

Mr. Atkins: Yes, your Honor.

Defendant Douglas: Look here. This here where it says, [fol. 78] "or in a case in which the Court finds that because

of conflict of interest or other reasons the public defender"—you do not have the knowledge, proper knowledge to defend us, I don't think, because you haven't read the transcripts, and they are involved. You do not have the proper knowledge. There is a conflict between us, and you, therefore, I don't think it would be proper for you to defend us.

The Court: All right. We will take a few minutes recess, and counsel will be permitted to go into the lockup and discuss the matter further.

(Short recess taken.)

The Court: Let the record show we are at the bench with the defendants and counsel out of hearing of the jurors.

Proceed.

Mr. Atkins: I have discussed the matter thoroughly with both Bennie Meyes and William Douglas. The way things stand now I believe that they desire to dismiss me as counsel. I would suggest that your Honor question them thoroughly and also make clear to them their rights in the matter and the prospects of continuance to get their own counsel and the fact that they would be required to go through with the trial without counsel in that event.

The Court: Mr. Douglas, is it your desire to dismiss Mr. Atkins as your attorney?

Defendant Meyes: Yes, sir. He's not properly prepared. [fol. 79] The Court: I'm talking to Mr. Douglas.

Defendant Douglas: It is my desire because he is not properly prepared to defend me and Mr. Meyes at the same time; and he haven't given enough time to my case in order to defend me properly so, therefore, it is my wish that he be dismissed.

The Court: All right. You understand now that if he is dismissed, I do not see any basis for a continuance, and you will be required to proceed and defend yourself without the aid of an attorney. Now, if you are prepared and want to do that, of course, you can do it, if you desire. But, you will have to conduct the examination of the jurors, voir dire; you have to conduct the examination of witnesses and handle the entire matter without assistance of counsel.

Defendant Douglas: Now, as I stated, I desire to dismiss him. I have nothing, no witness I want to cross—no witness whatsoever. The prosecutor can put on his case. I have

nothing to say. That is it. I have nothing to say. He can put his case on.

The Court: You can do as you wish about your defense.

Defendant Douglas: That is all I have to say.

The Court: But I want you to understand—

Defendant Douglas: I understand all that.

The Court: I want you to understand that if you dismiss [fol. 80] your attorney, then the obligation of putting on any defense, no matter how you think it should be handled, is entirely up to you. Do you understand that?

Defendant Douglas: I really do.

The Court: And you still want to dismiss Mr. Atkins as your attorney?

Defendant Douglas: Yes, sir.

The Court: And Mr. Meyes, is it your desire to dismiss Mr. Atkins as your attorney?

Defendant Meyes: Yes, sir; it is, your Honor.

The Court: Do you also understand that if you do dismiss him as your attorney—that which is your right, of course—you will have to carry the defense of the case yourself, have to ask all of the necessary questions and do all the cross examining? You have to do that all yourself without the aid of counsel.

Defendant Meyes: Well, sir, we desire counsel, but we do not desire Mr. Atkinson to defend us because he is not qualified. He's not properly prepared to defend us, and we are no lawyers. We aren't lawyers. We can't fight Mr. Joe Carr, and we, my defense lies in the—I don't have any defense against a skilled attorney like Mr. Carr; but I do desire an attorney, but I do not desire Mr. Atkinson to defend me.

The Court: Well, then, if you intend to dismiss Mr. Atkins just to secure another attorney, I cannot grant your [fol. 81] motion to dismiss Mr. Atkins.

Mr. Atkins: Now, may I make a statement?

The Court: Yes.

Mr. Atkins: These two defendants desire to dismiss me from the case. Now, I have prepared this case so that I could defend it now. I have not had the opportunity, through no fault of my own, to prepare this case in the manner in which I would like to be prepared. I have at this point not had the opportunity to cross index all of two trials

and one preliminary transcript of all of the witnesses who will appear in this trial. For that reason I feel I would like to be better prepared than I am now.

However, as this trial progresses, I feel I would be able to do that as I go along, and it may not be to Mr. Meyes' satisfaction or Mr. Douglas' satisfaction, but I would be able to do that and do it properly. Nevertheless, they desire to dismiss me, and I wish to make this statement on the record: That I have explained all these things to these defendants thoroughly. I have implored them, even though they do not want me, to let me continue the case because my conscience does not allow me to let these two boys go through a trial of this nature without an attorney. I cannot conceive of it being a trial. However, in spite of those statements which I made to them concerning the retaining of me as their counsel, they have stated to me that they want to dismiss me. [fol. 82] Under those circumstances I feel I just have to get dismissed.

The Court: Well, Mr. Douglas has stated positively without qualification he wants you dismissed, but Mr. Meyes has not stated that.

You understand, Mr. Douglas, if you want to dismiss your attorney, you may do so, but I want to call your attention to the fact you have to carry the burden alone.

Defendant Douglas: I would like to clarify something. As I said, I want to dismiss Mr. Atkinson for the reason that he is not properly prepared to defend me; but, now, I would like to obtain my own counsel, and I can't fight this case myself. I need counsel, but I don't think Mr. Atkinson is prepared to defend me, and for that reason I would want to dismiss Mr. Atkinson.

The Court: You have to make your choice definitely one way or the other. Either you dismiss Mr. Atkins and proceed alone or you keep Mr. Atkins, because if it is a qualified dismissal, the Court cannot accept it.

Defendant Meyes: He is dismissed. The Court can go ahead and take advantage of us just like he has been.

The Court: The Court is going to use every effort to see that no advantage is taken by anybody, prosecution or defense, one way or the other.

Defendant Douglas: You have been.

Defendant Meyes: We are standing mute. We aren't

[fol. 83] opposing Mr. Carr. He can do what he want to do. We just don't have counsel.

Mr. Atkins: I want the record to show an unqualified dismissal by both of these defendants before I withdraw.

The Court: It does not show an unqualified dismissal. We will now proceed.

Mr. Atkins: Well, your Honor, I cannot proceed under these conditions.

The Court: I cannot permit you to withdraw.

Mr. Atkins: Well, I won't withdraw.

Defendant Meyes: We want to dismiss him. That's all.

The Court: If you make an unqualified request to dismiss him, I will grant your request, but it must be unqualified.

Defendant Meyes: I don't want him to represent me.

Defendant/Douglas: Same here.

The Court: Mr. Douglas, do you move to dismiss Mr. Atkins?

Defendant Douglas: That's right.

Defendant Meyes: I move to dismiss Mr. Atkins.

The Court: You also, Mr. Meyes. You thoroughly understand that each of you have to carry the burden of your respective defenses.

Defendant Meyes: We are not going to oppose Mr. Carr. We are no attorneys. We aren't going to cross examine any witnesses. We aren't going to do anything. We are going [fol. 84] to sit mute.

The Court: However you handle your defense is your own business. That is, I want that understood.

Defendant Meyes: We can't defend ourselves. That is for sure. Mr. Atkinson can't defend us either.

Mr. Atkins: That is not true.

Defendant Meyes: You have given us all indications that is true last night when you talked to us in the attorney room.

Mr. Atkins: It is not true either.

The Court: Well, everytime that I ask you if you want—

Defendant Douglas: We have said that we would want to dismiss him and if we can't obtain another counsel after this one, we have no more to say. That is all. You can proceed with the Court as far as I am concerned.

The Court: I want it unqualified.

Defendant Meyes: I am not qualified to defend myself;

that's for sure. I want a lawyer, but I don't want Mr. Atkinson.

The Court: All right. That being so I cannot—the motions each being qualified—I will not relieve Mr. Atkins at this time.

Proceed with the selection of the jury.

Defendant Meyes: Well, he's doing this—he's not defending me. I fired him.

[fol. 85] Defendant Douglas: I also have made a motion he's fired from my case. He is not defending me and, if the Court wishes to proceed with him, using him, using Mr. Atkinson against my will, they can do so. He can try it like he want to try it. Now, I have told the Court that I would like to dismiss him. That is it.

The Court: All right. That is definite, is it?

Defendant Meyes: That is definite. We don't want Mr. Atkinson to defend us. We want legal representation against this cruel Mr. Carr, but we don't want Mr. Atkinson at all.

The Court: Well, we are back where we started from. Proceed, Mr. Atkins. You are not dismissed. I understand you have a tough—

Mr. Atkins: How can I defend these two if they are going to sit there and not help me anyway. It is not that I need too much to defend them, but still and all there comes a time in the trial when sometimes you want to ask your client something and there comes a time when you need their help in determining something. Sometimes these things arise at such a juncture in the case that it is absolutely necessary. How can I defend them if they are going to sit there and don't want me and don't want me to represent them at all? Your Honor, I mean it is not so much that it is hard to do; it is practically impossible.

The Court: Well, if the defendants have made it impossible for an attorney to give them any assistance, I do not [fol. 86] know how I can make any change.

Defendant Meyes: He is not defending me.

Mr. Atkins: Well, now, suppose that this case were continued until Monday and I had that much time to prepare, would you still desire to have me relieved as your counsel?

Defendant Meyes: Yes.

Mr. Atkins: Mr. Douglas?

Defendant Douglas: Well, if we could get private counsel for each of us, which would be proper, and get a week, I would go for it.

Mr. Atkins: Go for what?

Defendant Douglas: For to keep you as counsel. We can get a delay of a week and a counsel for myself.

Defendant Meyes: You are speaking for me now. Don't speak for me.

Defendant Douglas: Well, I said for myself, counsel for myself.

Mr. Carr: It appears to me, if your Honor please, that this is a plan conceived by the defendants for the purpose of delaying tactics insofar as this case is concerned. Mr. Meyes feels that he has nothing to lose in view of the fact that he has been violated on a parole and is due to return to State Prison on a violation of parole as well as on a sentence for second degree murder.

Mr. Douglas is in violation of probation, and he has been sentenced on that and, as I recall, I may be in error—he [fol. 87] has a—

The Court: There is no prior charged against Douglas.

Mr. Carr: That was a misdemeanor, your Honor, but it was, I believe, a N.S.P., or a forgery, which was made a misdemeanor. He was sentenced to one year. That was suspended and he was placed on probation. He violated that probation, and he is now in the County Jail on that.

So, timewise they figure they have nothing to lose and are engaging in delaying tactics so far as this particular case is concerned.

Defendant Douglas: In answer to Mr. Carr.

Mr. Carr: Just a moment, please. They are not satisfied with this lawyer, not satisfied with anything. They are merely satisfied with making a lot of accusations, if your Honor please, against counsel that represents them.

I understand that Mr. Atkins for a number of years was in the United States Attorney's office. He is well thought of in the public defender's office as one of their able defenders. It would not make any difference to these defendants, in my humble opinion, whether it was Grant Cooper or Jerry Giesler or a number of other leading lawyers here in Southern California and those around the San Francisco Bay area. If all of them represented them, they would still indulge in those delaying tactics.

Defendant Douglas: In answer to Mr. Carr's statement about my past record, that is a misdemeanor, and I am not [fol. 88] doing any time on that sentence, Mr. Carr.

The Court: Well, the Court is not concerned about that.

Defendant Douglas: I wondered when he brought it up. It is not a felony. It is not a felony.

The Court: All right. Not having an unqualified dismissal, we will proceed with the trial.

Defendant Meyes: I don't want you to represent me.

Defendant Douglas: Same here.

Mr. Atkins: Well, your Honor, I do not know is there anything that could be anymore unqualified than that?

The Court: Everytime the defendants say they don't want you to represent them they say they want another attorney, and that is not an unqualified dismissal. If they fire you period, that is something else, but they have not done that, neither one of them.

Defendant Douglas: Now, I will say this. He haven't had enough time to properly give me the proper defense, and, like I say, I think that this morning, if we are being pushed and without continuance, I wouldn't, I couldn't use him.

Defendant Meyes: I can't use him under any circumstances. I'm letting you know, Mr. Atkinson, I don't want you to represent me.

Mr. Atkins: Well, that seems unqualified enough, your Honor.

[fol. 89] Defendant Meyes: I don't want you to represent me. I stated that as clearly as I know how. I do not want you for my counsel. I don't want you under any circumstances.

The Court: All right. You now state the same thing, do you, Mr. Douglas?

Mr. Douglas: I do.

The Court: Very well. Then, under those circumstances I will have to relieve Mr. Atkins. We will proceed with the trial.

Mr. Carr: Now, along those lines further: if your Honor please, may I suggest a procedure?

Mr. Atkins: Your Honor, am I excused now?

Mr. Carr: Well, if you will pardon me just a moment.

The procedure that was followed in one other case a num

ber of years ago was held to be satisfactory. I have reference to the Chessman case. I was present at the time. It appears in the reports that the defendant there, Carr Chessman, took the same attitude that these defendants did, but because of the fact that the Court at that time, the Honorable Charles France, felt that there would be issues involved there which would entail a knowledge of criminal law and procedure, that he appointed the then Deputy French Defender, Mr. Al Matthews, to remain at the court sitting to act as advisor to the defendant who was then appointing in proper.

Now, this case may or may not involve intricate questions [fol. 90] of law, evidence and procedure, but I think that courts should be at least able to advise the defendants in case some point comes up.

Mr. Atkins: I oppose that motion.

Mr. Carr: Pardon me just a moment, please. A defendant, as I understand the law, who represents himself has no greater rights in the trial of a lawsuit than if he is represented by a lawyer. He is required to adhere to the rules of evidence and procedure and to the substantive law of the state. These two men being untrained, I say, in law, might possibly find themselves in a situation when they would require advice.

Mr. Atkins: Your Honor, I oppose that motion, and I do so for this reason: If these defendants want an attorney to represent them, I am here qualified and ready to try their case for them. I do not want to be placed in the position of sitting in a trial that I cannot determine with fairness and cannot guide the trial toward the end that I believe it should be guided toward. I am not going to sit here and have a trial be perverted and have myself have to sit back there doing nothing and watching it go on, and then at sometime during the trial something comes up, be called upon to advise them and they don't want my advice. I think that is putting me in a position which is untenable for myself or for any other attorney.

I oppose the motion and I most respectfully beg the Court [fol. 91], not to make such an appointment. They have an opportunity to get an attorney who in my humble estimation is equal to the task. They do not want it. Therefore,

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I request to be relieved. They have unqualifiedly dismissed me. I request to be relieved.

The Court: Mr. Douglas or Mr. Meyes have anything to say on that point?

Defendant Douglas: Nothing.

Defendant Meyes: There is definitely conflict of interests here between Douglas and I, and I know as the case.

The Court: I mean with reference to the last matter.

Defendant Meyes: I don't want Mr. Atkinson to represent me. Nothing to say.

The Court: I think if an attorney is in a case, he should have charge of litigation and not be merely an advisor. I have the greatest respect for Judge Fricke, but I am not going to appoint the public defender as an advisor. Either he is to be an attorney and have full charge of the litigation or not to be in the case.

Therefore, Mr. Atkins, I will relieve you entirely. The defendants will then conduct the defense themselves.

We will proceed with this selection of the jury.

Mr. Atkins: Thank you, your Honor.

[fol. 92] Now, your Honor, there is only one more point. I have in court the transcripts of the first trial, the second trial and the transcripts of the preliminary hearing. I feel in all fairness I should leave them here. However, they are property of the public defender's office. I would like them returned at the conclusion of the trial.

Mr. Carr: There is one other matter I think that you might take into consideration in trying to resolve that, Mr. Atkins. That is, I believe, the defendant Meyes has taken an appeal from his conviction of second degree murder, and I think your office is representing him in that appeal.

Mr. Atkins: I think so, yes.

Mr. Carr: So, that transcript is necessary to the attorney that is going to work on that appeal.

Mr. Atkins: Well, that is true. I do not know what use they are going to make of them. I cannot conceive of leaving them without them. I think the record should show I have left that transcript of the first murder trial, the transcript of the second murder trial and the transcript of the preliminary hearing here in court.

The Court: All right. Those transcripts are left here for the use of the defendants, and they do belong to the public

defender's office for their use, and the defendants—with reference to the appeal in the *Meyes* case—the defendants should both be required to make those transcripts available [fol. 93] so that counsel can proceed with the appeal in the *Meyes* case.

Do you understand that, Mr. *Meyes* and Mr. *Douglas*?

Defendant *Meyes*: Well—

Defendant *Douglas*: I didn't understand.

The Court: In other words, you can use the transcripts, but you have to see that they are available so that they can be used by counsel in going ahead with the appeal in the *Meyes* case.

Defendant *Meyes*: We are not defending ourselves. We are just going to sit here and let Mr. Carr do what he wants.

The Court: That is up to you. Proceed.

(The following took place in open court in the presence and hearing of the jury.)

The Court: Ladies and gentlemen of the jury, Mr. Atkins incidentally, I had introduced him as Mr. Atkinson. I was in error. It is Norman R. Atkins. Mr. Atkins has been relieved as counsel for the defendants and the defendants have determined to defend themselves, each individually, without the assistance of counsel.

We had not selected a jury yet, and, so, we are still in the process.

I may ask a few more questions now. Would the fact that the defendants are representing themselves without [fol. 94] counsel, do you believe it would make any difference in your deliberation in this case?

I think I have no more questions along that line.

Mr. *Douglas*, you are the first one named in the proceeding. So, now, it is your opportunity to examine the jurors for cause.

Defendant *Douglas*: I have nothing.

The Court: Do you have any examination for cause?

Defendant *Douglas*: No.

The Court: Very well. Then, Mr. *Meyes*, this is now your time to examine the jurors for cause.

Defendant *Meyes*: I wish to make the statement, your Honor, just for the purpose of the record, that we have asked for counsel and we haven't been given counsel, and we are no way able to defend ourselves against Mr. Carr.

The Court: Now is the time—the jurors will disregard the statement. This is the time to examine the jurors for cause. Now, if you have any questions now is the time to ask the questions of the prospective jurors.

Defendant Meyes: I'm not a lawyer, your Honor.

The Court: Well, we have gone through that at some length at the bench, and I called those matters to your attention.

Very well. You may examine for cause, Mr. Carr.

Mr. Carr: Thank you, your Honor.

[fol. 95]

IMPANELLING OF JURY

Initially, in the inquiry, ladies and gentlemen, this inquiry that the Court refers to concerning cause, questions asked of you by counsel are not with any intention of prying into your private affairs but are asked to determine your state of mind towards a particular, towards the particular case that is now on trial. As Mr. Atkins questioned you, I am sure that he was not trying to find out anything personal about you but to determine your state of mind towards the case and towards certain facts as he believed they would be developed. Those facts had not been disclosed to you nor the Court. That is the purpose of my questioning likewise.

Now, may I inquire by a shew of hands as to the jurors that have previously acted in a criminal proceeding, any kind of criminal case. Are there any?

Three.

Are there any jurors who have previously acted as a juror in a civil case?

And I understand that there are some jurors that have never acted as jurors in either a civil or criminal case.

Now, all of you—but I am directing my questioning to those have never acted in either case—when you first reported for jury duty you each received a little pamphlet wherein certain principles of law were enunciated to you. Do you ladies and gentlemen recall that? And you had an [fol. 96] opportunity to read those through. Now, you understand, of course, that that pamphlet is in the nature of an orientation and that whatever law applies to any particular case you will receive from the Judge that presides in that particular case.

Now, in response to some questions of Mr. Atkins, you all

understand that these 13 counts or 13 charges in and of themselves have no weight. In other words, to all intents and purposes they have served their function by bringing the defendants to trial. You understand that. The only thing now that they need is they give direction and meaning to the evidence that will be introduced and as to the issue that you will be called upon to find; that is, the guilt or innocence of the defendants on each of those counts. You understand that. So, to paraphrase from Mr. Atkins' statement, they may be 13 bum counts, they may be 13 good counts or they may be a combination of both, but they themselves lend no evidentiary matter to the trial of these proceedings—you understand that—other than to give direction and meaning, such as a sign that might be on the highway pointing to San Diego. The sign is not San Diego. It merely helps you to find San Diego.

Now, another question was propounded by Mr. Atkins in connection with the matter of race. You each understand that the defendants are not on trial here because of any question of race, color or creed, you understand, and in no [fol. 97] way are you to permit that to enter into your deliberations one way or another. You are not supposed to assume that because they are of one race that they are more prone to commit crimes than you are to assume that because an individual is of some particular race he is less prone to commit offenses. You understand that. The matter was brought up by the defense.

I would like to inquire, do any of you feel that because that issue was injected into the examination that it might cause some difficulty in eradicating that factor from your mind in the course of your deliberations? Do any of you feel that way at all?

There was some inquiry as to whether or not you ladies and gentlemen had ever heard of this case or any of its counts before, and I believe generally you indicated that you had not. Now, Mr. Moore, if you will forgive me, please, do you subscribe or read a newspaper called the Los Angeles Tribune?

Mr. Moore: No, I do not.

Mr. Carr: Do you know of the existence of such a paper?

Mr. Moore: Yes, I do.

Mr. Carr: Have you seen any issue—it is a weekly, as I understand it—have you seen any issue of that newspaper for some time?

Mr. Moore: No. I don't even read it.

[fol. 98] Mr. Carr: Have you heard it discussed at all, sir, anything that has appeared in there recently?

Mr. Moore: No. I never have.

Mr. Carr: Now, Mrs.—is it H-u-d as in Denver or H u t?

Mrs. Hudnell: H-u-d.

Mr. Carr: D as in Denver. Mrs. Hudnell, do you know of such a paper as the Los Angeles Tribune?

Mrs. Hudnell: Yes, I do.

Mr. Carr: Do you read it periodically or once in a while?

Mrs. Hudnell: No.

Mr. Carr: Do you subscribe to it?

Mrs. Hudnell: No.

Mr. Carr: Did you hear anything in there discussed by anyone?

Mrs. Hudnell: No, I haven't.

Mr. Carr: You understand, do you not, ladies and gentlemen—I am directing my questions as a whole again—that you are not to determine this case on what you see in the newspapers? Should anything be in the newspapers, or as this case develops your recollection be refreshed that at sometime in the past you may have heard something in the newspaper, that is no part of the evidence in this case. Nothing that you hear on the radio or have ever heard on the radio about this case is no part of the case and it should [fol. 99] not enter into your deliberations. It goes without saying that the same applies to television.

Those of you who have been members of prior criminal jury panels, and all of you have read this pamphlet, you understand and recall that you are admonished that you decide the case on the evidence that you hear and see in the courtroom; that is, within the four walls, the floor and the ceiling in here; not anyplace else. You understand that.

Now, in the questioning of you jurors by Mt. Atkins there was some question concerning bias and prejudice against the defendants. You ladies and gentlemen understand that there are two parties to this lawsuit. The two parties are the People of the State of California, for whom it is my privilege and honor to represent. They bring these charges

against the defendants; and they are the defendants. So, there are two parties—the People of the State of California and the defendants. You understand that.

Is it likewise your understanding that the People of the State of California have rights in connection with this law suit as well as the defendants, and do each of you stand fair and ready now to zealously protect the rights of the People of the State of California as you do those of the defendants?

Now, the matter was brought up concerning prior convictions [fol. 100] or felonies, and it was directed principally to the defendants. Now, I do not know whether it is or is not a fact, but that use of prior convictions, felonies in impeaching witnesses is not necessarily directed to defendants but anyone, whether he is called on behalf of the People or whether he is called on behalf of the prosecution. He may be asked if it is—

The Court: You duplicated. You said on behalf of the People or the prosecution.

Mr. Carr: Oh. Thank you, sir. I am sorry.

Any witness when called on behalf of the People or whether he be called on behalf of the defendant or whether it is the defendant, any witness may be asked in good faith whether or not he has ever been convicted of a felony or evidence may be introduced in that regard and, if the evidence is in the affirmative, the jury has a right to consider it for the sole and exclusive purpose of determining the weight and credibility, the bias, prejudice, sympathy or passion insofar as it may concern that particular witness and may tend to color that witness' testimony and thus detract from the value that you will give to his testimony. You understand that, ladies and gentlemen? And, understand that, should that become an issue in here, should it so develop, you will use it for that purpose and that purpose only unless otherwise advised by the Court, is that correct?

[fol. 101] Now, the defendants in this case have seen fit to represent themselves. Now, the fact that they are not lawyers representing themselves and on the other side of the fence is one who at least has been admitted to practice law and done so for some 30 years, would you feel prejudiced against the prosecution because of the fact that the People are represented by an attorney and the defendants are not?

Juror No. 6: I would like to ask a question.

Mr. Carr: May I suggest, sir, that you address your question to the Court.

Juror No. 6: A man in a criminal proceeding, can he elect counsel to have as his attorney?

The Court: The defendant in a criminal proceeding may elect to proceed without an attorney. Now, under the constitution a person may either represent himself alone or may be represented by counsel, and it is his choice and, when the choice is made, the Court has no alternative.

Proceed, Mr. Carr.

Mr. Carr: Now, in that connection, Mr. Nolan, you asked the question. Undoubtedly you had a reason for it. Now, may I direct this question at you, if you will pardon me, sir. Would you feel prejudiced against the People of the State of California, whom I represent, because they were represented by a lawyer and the defendants are representing themselves?

Mr. Nolan: I wouldn't feel prejudiced, but it is a very ignorant procedure for a defendant.

[fol. 102] Mr. Carr: Well, you said something about ignorant. I do not want to make any comment on it, but it is the procedure. Are you willing to accept the procedure as set forth in the Constitution of this State and the country, as a matter of fact, as the Court has indicated it to you?

Mr. Nolan: The Judge says it, naturally I subscribe to the law. Crazy, though.

Mr. Carr: No. Again, may I ask you the question. I hate to press the point, but I think that it is of some importance. Would you be prejudiced against the People of the State of California because they are represented by counsel and the defendants are not?

Mr. Nolan: No. I have no choice. If it can be done by law.

Mr. Carr: This feeling of prejudice, sir, there is nothing which concerns the law. It is a consciousness of feeling that you have within yourself. Do you feel that the People are taking advantage of the defendants because the People are represented by a lawyer and the defendants are not?

Mr. Nolan: I don't think so.

Defendant Meyes: If it pleases the Court, we stated in the beginning that we are not lawyers, and—

The Court: That is correct.

Defendant Meyes: --in no way.

The Court: If you have an objection, you voice your [fol. 103] objection and tell me what it is.

Defendant Meyes: Well, we had stated for the record that we were not representing ourselves.

The Court: No.

Defendant Meyes: Mr. Carr is putting on his case. We are going to sit here at this counsel table and let Mr. Carr make all the statements he wants to make. We can't defend ourselves. We aren't lawyers.

The Court: No.

Defendant Meyes: What defense can we offer? We don't have any counsel. We asked for lawyers. You denied that. How can we defend ourselves against Mr. Carr, a trained attorney?

The Court: I will have to correct your statement, because you were offered counsel and deliberately dismissed counsel after being fully advised of your rights, and, however you wish to conduct your defense is your business.

Mr. Douglas: Now, your Honor, without proper counsel you mean to say we have to —

The Court: You have with full knowledge and with —

Defendant Douglas: Without proper counsel you want us to proceed?

The Court: You have dismissed your counsel. The objection is overruled. Proceed, Mr. Carr.

Defendant Meyes: Well, let it be known that counsel wasn't prepared to represent us. He did not read these [fol. 104] transcripts.

The Court: We have gone over that matter at the bench.

Defendant Meyes: Well, they can discontinue it for us. We asked for lawyers. They can just discontinue this farce as far as we are concerned. How can we protect ourselves against Mr. Carr who has practiced for 30 years? I ask you that. That is a violation of the law right there.

The Court: You deliberately made that choice against the advice of your attorney and against the advice of the Court.

Defendant Douglas: We have a right to obtain private counsel.

The Court: No. I will not have any more interruptions.

Defendant Meyes: Are you going to continue this farce?

The Court: Just a moment, Mr. Meyes. It is time for the recess anyway. We are going to take a ten-minute recess at this time. We better take a fifteen-minute recess.

Defendant Meyes: It is a big joke.

The Court: Fifteen minutes, and the jurors that are now in the box may use the jury room here and the other jurors may use the hallway.

Defendant Meyes: Big joke. That's what it is.

The Court: We will take a fifteen minute recess at this time. Just a moment, Mr. Meyes. The court will remain [fol. 105] in session for a few minutes.

(The jury withdrew at 3:13 p.m.)

(The following proceedings took place in open court out of the presence and hearing of the prospective jury.)

The Court: Let the record show that all jurors have left the courtroom.

Mr. Meyes and Mr. Douglas, the statement that you have just made is not accurate. The Court has endeavored to retain counsel for you and you, knowing full well, you have discharged your counsel. That being so the matter is closed, and it is not proper to bring the matter up at this time.

Defendant Douglas: Well, it is not proper—

The Court: Mr. Douglas, you have deliberately discharged your attorney. We are not even going to discuss it.

Defendant Douglas: He's not counsel of my choice. I have the right to that.

The Court: That makes no difference.

Defendant Douglas: Well, then, you do what you want to do.

The Court: Very well. If it becomes necessary we have other ways to maintain order in the courtroom, and I hope that we will not be forced to resort to those means. We will now take a fifteen minute recess.

Defendant Meyes: If it please the Court, why don't you [fol. 106] take us out and shoot us then? This is supposed to be America. This isn't Russia.

The Court: We appointed counsel for you and you dismissed him. We will take a recess.

(A recess was taken at 3:15 p.m.)

(The court resumed at 2:30 p.m.)

The Court: All right, let the record show that all jurors are present and the defendants and the District Attorney. Proceed.

Mr. Carr: Ladies and gentlemen of the prospective panel, I was inquiring from Mr. Hurt, I believe it was. I was inquiring of Mr. Hurt as to his feelings in connection with the People of the State of California being represented by counsel and the defendants not being so represented.

Are there any of the members of the panel or are there any members of the prospective panel, rather, who would feel a prejudice against the People of the State of California in this matter because the people were represented by counsel and the defendants were not?

Now, basically, all of these questions which are asked of the jurors boil themselves down to this last question. Let us assume for the moment, if you will, please, that each and everyone of you—I am addressing you individually—we are in the place where I am—that is, representing the People of the State of California—there were twelve people in the [fol. 107] jury in the present frame of mind that each of you have towards this case, and if those twelve people went out after hearing all the evidence and the law to deliberate on a verdict, and they did return a verdict in this case, regardless of what the verdict was, whether it was not guilty or guilty, or not guilty in part and guilty in others, would you feel that you, as a representative of the People of the State of California, had received and would you feel that insofar as the defendants are concerned that both sides, regardless of where the chips fell, have received a fair and impartial trial in the hands of those twelve individuals each in the frame of mind that you individually have?

Thank you very much, ladies and gentlemen. Pass for cause.

The Court: Mr. Bailiff, I see that the defendants do not have any tablets. Do you have an extra tablet or two there? Give them a pencil so that if they want to make notes, they may do so.

Defendant Méyes: The law states that the accused is entitled to counsel, and we demand counsel, but we do not demand this man to represent us who was here, because he

was not properly qualified nor properly prepared to put this case on. This is supposed to be America. This isn't Soviet Russia. We demand counsel. We cannot defend ourselves against Mr. Carr. We have to have a lawyer. [fol. 108] The Court: Very well, Mr. Meyes.

Defendant Meyes: When you do this thing, you are doing it without our consent. We demand to be represented by a lawyer.

The Court: Those matters were brought to your attention before you took the action that you took. You were urged not to take the action, both by Mr. Atkins and by the Court. The matter has been disposed of. You made the choice, and that is all there is to it.

Defendant Meyes: You tried to jam Mr. Atkins down our throats. He wasn't prepared to defend us.

The Court: I tried to see you were represented by counsel. You would not let the Court do that.

Defendant Meyes: Mr. Atkinson had never even read the transcripts of this trial. He doesn't know what is in the transcripts. How can he defend us? We demand our constitutional rights. We demand counsel to represent us. We demand that.

The Court: All right.

Defendant Meyes: Try us without an attorney you are doing it illegally.

The Court: This is the time for exercising a peremptory challenge, and I might state that the challenges are exercised alternately, the People have the first challenge and then the defendants have a challenge. The defendants may exercise a total of ten challenges jointly and, in addition [fol. 109] thereto, each defendant individually has five challenges. The peremptory is now with the plaintiff.

Mr. Carr: If your Honor please, I am prepared to proceed on that, but I would like the record to show that in each of these instances that either Mr. Meyes or Mr. Douglas has gotten up to make some statement, that it was not made to the Court but was made to the prospective panel and to those sitting behind the rail. In other words, it appears to me to be what is called a grandstand move, if your Honor please.

Defendant Douglas: I object to that.

Mr. Carr: They are not addressing themselves to the,

Court in that manner but merely delivering these tirades and speeches.

Defendant Douglas: I object to that.

Mr. Carr: The Court has advised these gentlemen that I think they can be advised—that those who have no funds are entitled to be represented by the public defender's office. Mr. Atkins is a man of experience and he was prepared to go ahead with the defense of this case. These defendants sought to discharge him.

Now, if they have funds, they have a right to counsel of their own choosing. If they do not have funds, they get the public defender's office, members of which are not inexperienced. There are men in there as experienced and well trained as the best counsel they have. They have sought to [fol. 110] go ahead this way, it seems, for delaying tactics only.

Defendant Douglas: I object to that, your Honor, on the grounds that I have not directed no questions to the jury panel, prospective jurors. I directed all my questions and answers to the Court.

The Court: That is a correct statement, Mr. Douglas, but he mentioned about the statement made by Mr. Meyes.

Defendant Douglas: He also included me, sir.

The Court: No. It is true that Mr. Meyes did not appear to be addressing the Court; he appeared to be addressing the jury panel.

Defendant Douglas: Also, again, I'd like to say this, that in denying us counsel that would defend us properly, that is violating our constitutional rights to have an attorney of our choice, and I made a motion this morning that I could afford my own attorney, and I am denied that motion to obtain my attorney.

The Court: All right. Those matters have been disposed of.

Ladies and gentlemen, you are not to be concerned in this case as to employment of counsel. These matters have been gone over at great length previously, and the matters are not in your hands, and you are not to give any consideration to them.

[fol. 111] Now is the time to exercise the peremptory challenges, and the People have the first peremptory.

Defendant Meyes: Your Honor, Mr. Carr's trying to use these people to illegally lynch us.

The Court: Mr. Meyes,—the jury will disregard the remarks. Proceed, Mr. Carr. The peremptory is with the People.

Mr. Carr: The People will accept the jury as now constituted.

The Court: All right. I will ask of the defendants jointly and then I will ask them individually, do the defendants desire to exercise—now is the time to exercise a challenge of any juror jointly.

Defendant Meyes: Like to demand a lawyer.

The Court: You may exercise a challenge jointly or you—do you exercise a challenge jointly, gentlemen?

Very well. Since the defendants have not indicated any challenge, then I will ask them individually, Mr. Douglas, do you desire to exercise a challenge at this time? Do you desire to exercise a challenge?

Defendant Douglas: I have nothing to say, your Honor.

The Court: Nothing to say. Very well.

Mr. Meyes, do you desire to exercise any challenge at this time?

Defendant Meyes: I demand a lawyer, your Honor.

The Court: Very well, but do you desire to exercise any [fol. 112] challenges?

Defendant Meyes: I still demand a lawyer.

The Court: Very well. Then, no challenges to the jury having been made, the clerk will swear the jury.

(Whereupon the clerk then swore the jury in.)

The Court: How about the other jurors?

Mr. Carr: Pardon me, your Honor. Your Honor recalls your ruling this morning that the taking of the evidence would commence tomorrow. That would give us all today, Thursday, Friday, which is taken up with other matters. That is a goodly portion of the morning. Then we have the weekend. Might I, therefore, suggest that this might be considered a protracted matter and at least one alternate be chosen.

The Court: I think that is a good idea. Just a minute. Before you turn the jurors back, we will select an alternate.

The Clerk: Select an alternate?

The Court: Yes.

The Clerk: Theodore A. Blundell.

The Court: Mr. Blundell, you heard the answers of the other juror.

Mr. Blundell: Yes, sir.

The Court: If I repeated the questions asked you, your answers to those questions must be substantially the same as those given by the other jurors.

[Vol. 113.] * Mr. Blundell: Yes, sir.

The Court: All right, Mr. Douglas. Do you have any questions, Mr. Douglas?

Very well. Not having any.

Defendant Moses: I just demand a trial.

The Court: Very well. Mr. Carr.

Mr. Carr: Mr. Blundell, did you hear the questions except those that ought to be put to you? Did you hear the questions that I asked the other jurors?

Mr. Blundell: Yes, I did.

Mr. Carr: Would your answers differ in any particular from those answers which they gave me in reply to the questions only by either stating them in the affirmative or in the affirmative if I were to put all those questions to you?

Mr. Blundell: They would be no different.

Mr. Carr: Have you ever acted as a juror in a criminal proceeding?

Mr. Blundell: No, I haven't.

Mr. Carr: Well, proceeding before.

Mr. Blundell: Yes, to deliver a verdict.

Mr. Carr: I am sorry. I didn't help you, sir.

Mr. Blundell: Yes. The trial never went to a verdict.

Mr. Carr: But the affirmative of your Honor.

The Court: Very well. On the previous page [Vol. 114] entitled to one challenge, for each defendant separately. All right, do the defendants jointly have any challenge? If so, now is the time to exercise such. Within minutes. The challenge is with the People first.

Mr. Carr: Very well. We will accept the challenge of your Honor.

The Court: All right. Do the defendants jointly have any challenge? Not hearing any, then, Mr. Douglas, do you have a challenge?

Defendant Douglas: I demand my constitutional rights.

The Court: Mr. Meyes, do you have a challenge?

Defendant Meyes: I demand to be represented by counsel.

The Court: Very well. There being no challenges, will you swear the alternate?

(The alternate juror was sworn by the clerk.)

The Court: All right. Now how about the other jurors?

The Clerk: They are all to return Monday, October 5th.

The Court: Do you want somebody to take the tickets back?

The Clerk: Yes, somebody to take the tickets.

The Court: The other jurors are instructed to return to the jury assembly room in the new County courthouse at 9:00 o'clock a.m. next Monday morning. I want a volunteer, [fol. 115] though, to take the tickets back this afternoon.

Ladies and gentlemen of the jury, you are admonished that it is your duty not to converse among yourselves or with anyone else on any subject connected with the trial or to form or express any opinion thereon until the cause is finally submitted to you.

We will take the afternoon recess at this time. We will reconvene tomorrow morning at 9:45. I might suggest that if some of you come in early, as I hope you do, at least early enough to be here on time, you can go right through and use the jury assembly room upstairs. There are proceedings before 9:45, so regardless of the proceedings, you can go right on through up to the jury room.

(Whereupon at 3:45 p.m. an adjournment was taken until October 1, 1959 at 9:45 a.m.)

[fol. 116] Los Angeles, Calif., Thursday, October 1, 1959,
9:50 A. M.

(The following proceedings were had out of the presence of the jury and the defendants:)

Mr. Carr: In the matter of Douglas and Meyes, your Honor, the following witnesses are now here: Fanny Tubbs, Mathe Smith, M. C. Smith, Frank Stevenson, Henry Carroll, Aaron Hatch, Moses Forrest, Jr., and Louise Adams.

The Court: All witnesses in the case of Douglas and Meyes are instructed to go outside of the courtroom but wait in the courtroom No. 105. No. 105 is the next courtroom down

the hall, and if you are needed you will be called. Wait in Department 105.

Mr. Carr: Fanny Tibbs will be the first witness. May I remain, your Honor?

The Court: All right. Fanny Tibbs will be the first witness. She may remain.

On that witness Dundas do you want to serve that forth with?

Mr. Carr: Yes, your Honor.

The Court: Did you give him the information?

Mr. Carr: Yes.

The Court: That is it, then.

Mr. Carr: Now, further, still on the record, please, in connection with the saw the ones, your Honor, your official [fol. 117] are not acquainted with them. I have taken the liberty of having an officer, Sergeant Dudgeon, who is acquainted with these witnesses, and will not be called as a witness in the proceedings as far as we know. That is, not in the People's case. As something develops from the defendants, so we wish to make sure to keep him here in the courtroom in order that he may go to 105 and get the witnesses as we need them so as not to disturb 105.

The Court: Very well.

Mr. Carr: If your Honor please, Mr. Bonker is now here.

The Court: Mr. Bonker, you are permitted to go to Department 105 and wait in Department 105 until you are called back to testify. I think we are going the defendants out and so if they have any motion that they want to make.

The Court: People against Douglas and Moyes. Let the record show the defendants are present, the District Attorney; but the jury is not present. We have been waiting. There is one juror that has not shown up and we are waiting for that juror to show up.

This is the juror now. We have been waiting for you, Mrs. Bright. Go right up to the jury room.

I thought before the jury would come in, though, if the defendants have any motion, as would be the time to make [fol. 118] any motion that they may have to make. I also want to call your attention to the fact that the defendant Bonker Moyes is charged with three major felonies, felonies; those prior have been denied. After the commencement of a criminal trial the Court requires that the clerk read

the information to the jury, including the priors and the fact that the priors were denied, and the fact that a plea of not guilty has been entered. Frequently the reading of the information is waived. Do as you wish, but I think I should call your attention to the matter of the priors. Whether you want to admit the priors or not, that is a matter that is up to you. If the priors are admitted, then when the clerk reads the information he does not read the portion of the information containing the allegations of the priors and no reference is made to the priors.

In the proceeding, also, the defendant takes the stand and then for the purpose of impeachment only, he may be inquired as to whether or not he has been convicted of a felony.

Do you have any desires with reference to priors, Mr. Meyes?

Defendant Meyes: We are not ready, your Honor.

The Court: Well, then, I will have the clerk read the information in its entirety to the jury.

Did you have any motions, Mr. Douglas, or Mr. Meyes?

[Tol. 119] RENEWAL OF MOTIONS FOR CONTINUANCE AND DENIAL THEREOF

Mr. Douglas: I have a motion I'd like to make to the open court.

The Court: Well, we are in open court right now, and the motion should be made out of the presence of the jury, so if you will proceed to make your motion at this time, then—

Mr. Douglas: Your Honor, you and I both know that we are wasting the State's time and money in this procedure with the case. I have no doubts in my mind whatsoever that the jury would render a just verdict both to the State and ourselves if they heard our side of the case, but if the trial was proceeded with accordance of the law, not being familiar with the terminology of the law but being familiar with my Constitutional rights, I am continuously aware of the fact that my Constitutional rights are being continuously violated and abused, and I beg of your Honor to cease this unjust procedure now and grant me the continuance that I ask for.

The Court: Well, I am not aware of any Constitutional rights being denied. Your counsel yesterday had asked for

a continuance on various grounds. He said he was not ready, and finally it came out that the only thing he was not ready on was that he had not cross-examined the testimony of the various witnesses.

Mr. Douglas: I understand.

The Court: Then, after that, you deliberately discharged [fol. 120] your counsel. Counsel happened to be a very able counsel and one that stands very high with the Public Defender's Office.

Mr. Douglas: I did not question counsel's ability to defend me. I only questioned his knowledge of my case, and I dismissed him for the reason that he did know nothing, had studied nothing about my case; he knew nothing and he was improper counsel. I did not disqualify, dismiss counsel. I dismissed improper counsel which was improper to me.

The Court: Very well.

Mr. Douglas: He didn't know my case.

The Court: The motion is denied.

Mr. Meyes: I would like to call the Court's attention again to 287-A of the California Penal Code, "Compensation for Assigned Counsel."

It says: "In any case in which counsel is assigned in the Superior Court to defend a person who is charged therein with crime, or is assigned in a Municipal Court or Justice's Court, or Justice Court, as established pursuant to the Municipal and Justice Court Act of 1949, to represent such a person on a preliminary examination in such a court and who desires but who is unable to employ counsel, such counsel, in a county or city and county, in which there is no Public Defender, or in a case in which the court finds that because of conflict of [fol. 121] interest or other reasons the Public Defender has properly refused to represent the person accused, shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the County."

"The Board of Supervisors may by contract provide that any Public Defender duly appointed or elected may charge reasonable fees to the Department of Corrections for representing inmates of prisons under its control, and the Department of Corrections may upon

approval by the court pay such fees into the County Treasury to be placed in the general fund of the county."

"Statutes," I think, "Stats, 1955, Chap. 185, reference Fricke, C.P., pages 69, 130 and 227."

The United States Constitution clearly states that any accused person is entitled to be represented by counsel. Mr. Atkins, the court appointed lawyer, stated that he was unable to represent us because he had not had the time to study the case. Therefore, by Mr. Atkins' own admission to the Court that he was not ready, therefore, he is no counsel but, as he stated to your Honor, if given additional time, he could be a counsel. This is strictly a violation of the Sixth Amendment to our Constitutional rights. Mr. Atkins would be our counsel if he was ready, but not being [fol. 122] ready for trial, he was not our counsel. Therefore, we are being denied our Constitutional rights and the right to have counsel to represent us, and I ask the Court to reexamine this portion that Judge Fricke had put down in 987-A of the California Penal Code that "because of the conflict of interest or other reasons"—and the other reasons that Mr. Atkins had clearly stated to the Court that he was not properly prepared; that he did not have the time to read all the transcripts involved in this complicated case. Therefore, he could not give the best of his service and, because of that, he was not representing us. He was not our counsel. He couldn't have been our counsel because he was unable to give us his best service, and I feel that under those conditions, your Honor, I think that you should take those conditions into consideration and appoint us counsel to represent ourselves, to represent us. We are in no way defending ourselves.

The Court: Well, I tried to call those things to your attention yesterday, and you would not pay any attention. You insisted on discharging Mr. Atkins. The motion is denied.

Call the jury down, please.

Mr. Meves: Once again, your Honor, the Sixth Amendment. "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been

[fols. 123-133] committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The Court: Yes. I called your attention that you were entitled to counsel and you deliberately, after I pleaded with you to keep your counsel, discharged him.

Mr. Meyes: Mr. Atkinson was at no time our counsel, your Honor, because he had not prepared himself to be our counsel. Therefore, it is like us having no counsel.

The Court: All right.

Mr. Meyes: We would like to be represented in court by counsel. We are not ready to go to trial.

The Court: All right, the motion is denied.

Let the record show all the jurors are present, the defendants and District Attorney.

Mr. Clerk, will you read the information to the jury.

[fol. 134] COLLOQUY BETWEEN COURT AND DEFENDANTS

To all of these counts the defendants have pleaded not guilty, and defendant Meyes has denied the prior alleged.

The Court: All right. This is the time for an opening statement, if there will be one. The District Attorney may [fols. 135-136] make an opening statement and, after he has made an opening statement, the defendants may make an opening statement or they may reserve their right to make an opening statement later, if they wish.

I might call your attention, ladies and gentlemen of the jury, that the opening statement is not argument and it is not evidence. It is merely a statement of what one side or the other expects to prove, and it is given for assistance to the jury in following the evidence.

Defendant Meyes: Before this begins, your Honor, I would like to call your attention to 287 A of the California Penal Code.

The Court: Well, if you have a motion—just a minute. If you have a motion to make, you will make it at the bench outside of the hearing of the jury.

Defendant Meyes: Your Honor —

The Court: Outside of the hearing of the jury. You may approach the bench and the reporter will take it down.

Defendant Meyes: I'm no lawyer. Only thing I want to read is the law stating we are entitled to counsel.

The Court: Very well. Now, if you want to make a motion, you will make the motion at the bench outside of the hearing of the jury.

Defendant Meyes: Your Honor, what is the motion? I don't know what a motion is.

The Court: All right; then, please be seated. If you [fol. 137] want to call the Court's attention to that section or whatever it is, you will come to the bench and present what you have outside of the hearing of the jury.

(The following proceedings were had at the bench outside of the hearing of the jury:)

The Court: I must call your attention that your voice must be low enough —

Defendant Douglas: I will try to keep my voice down.

The Court: All right.

Defendant Douglas: 987 P.C. of the Penal Code is "Compensation for Assignment of Counsel." It says:

"In any case in which counsel is assigned" —

The Court: A little lower.

Defendant Douglas: That is as low as I can talk. I'm sorry. I'm doing my best.

The Court: You are talking too loud. I am going to have to send the jury upstairs if you insist on talking so loud.

Defendant Douglas: Well, anyway:

"In any case in which counsel is assigned in the Superior Court to defend a person who is charged therein with crime" —

The Court: Not so loud.

Defendant Douglas: — "or is assigned in a Municipal or Justice's Court, or Justice Court as established pursuant to the Municipal and Justice Court Act of 1949, to represent [fols. 138-139] such a person on a preliminary examination in such a court and who desires but who is unable to employ counsel, such counsel," —

The Court: Just a minute, now, Mr. Douglas, and Mr. Meyes. We have gone over this three or four times before, and we are not going to repeat it at this time.

Defendant Douglas: This is all I can say.

The Court: Please be seated.

Defendant Douglas: This is all I can say.

The Court: Then you have said it.

Defendant Meyes: Let me say this:—

Defendant Douglas: You are denying all our Constitutional rights.

The Court: No, I have not.

Defendant Douglas: You have denied me a continuance so I can obtain a counsel.

The Court: Please be seated.

Defendant Meyes: We being denied—we being denied counsel, your Honor? I'd like to have a lawyer.

The Court: All right. Please be seated.

Defendant Meyes: We are not ready to go to trial.

The Court: You discharged your lawyer yesterday afternoon. Please be seated, and we will proceed with the trial. These are the same motions that have been made before.

[fol. 140] (The following proceedings were had in open court within the presence of the jury:)

The Court: You deliberately discharged your lawyer yesterday, and we will proceed with the trial. You elected yesterday to defend yourselves.

Defendant Meyes: We are not defending ourselves. The lawyer did not read all of these transcripts. He told you he didn't have the opportunity to read them.

The Court: Mr. Meyes, we have covered all of those matters, and we will now proceed with the trial. Please be seated.

Defendant Meyes: How could the lawyer defend us when he didn't read the transcripts, your Honor?

The Court: Please be seated.

Defendant Meyes: He said he wasn't able to read all the transcripts.

The Court: Mr. Meyes, if you do not be seated, if you will not be seated, we will have to take means to see that you are seated? Please be seated.

Defendant Meyes: We are not ready for court, your Honor. We are not ready for trial.

The Court: Proceed.

Mr. Carr: The People at this time waive opening statement, your Honor.

The Court: Defendants desire to make an opening statement on what they intend to prove? Do you desire reserve [fol. 141] that right?

Defendant Meyes: We are not ready for trial, your Honor.

The Court: Very well. Call your first witness.

Mr. Carr: Miss Tubbs, will you come forward, please.

As the witness is coming forward, if your Honor please, for the assistance of the Court and the jury, I will indicate as each witness prepares to testify, the count or counts of the information to which the testimony of this witness will be directed.

The Court: I might suggest to the jury that they may desire to take notes. I thrust that you have pencils and pads. If you do not have pencils and pads, the bailiff, I think, will have some extras to supply you.

FANNY TUBBS, called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your full name.

The Witness: My name is Fanny Tubbs.

The Court: Mrs. Tubbs, you are sitting back comfortably, and now pull that microphone to you. That is about right. All right, Mr. Carr.

Mr. Carr: For the Court and jury's assistance, the testimony of this witness will be directed principally insofar as Count 1 is concerned, and, secondarily, insofar as Counts 2, [fol. 142] 3 and 12 are concerned.

The Court: Very well.

Direct examination.

By Mr. Carr:

Q. Now, may we have your name again, please?

A. Fanny Tubbs.

Q. Now, is that Miss or Mrs. Tubbs?

A. It's Miss.

Q. Miss Tibbs, inviting your attention to the 10th of October, 1958, at sometime that evening were you at an address out on South Central Avenue?

A. Yes, sir, I were.

The Court: I think you better pull that microphone a little closer to you.

By Mr. Carr:

Q. That was here in the County of Los Angeles?

A. Yes, sir, it was.

Q. While you were there, by the way, what kind of a place was that? By that, I mean was it a home or a store or a hotel or apartment?

A. It was a hotel.

Q. You were in some particular room in that hotel?

A. Yes, sir, I were.

Q. While you were in that room did something happen?

[fol. 143] A. Yes, it did.

Q. What was it that happened?

A. Well, we was having a game.

Q. What kind of game?

A. Crap game.

Q. Crap. That is dice, is it?

A. Yes, sir.

Q. All right. How many people were there that you now remember were involved in this dice game?

A. It was about 25 of us.

Q. All right. What was it that happened there during the crap game?

A. Well, we was having a razzes and, in the meantime, some men came in and said that this was a stick up.

Q. All right.

A. And for nobody not to move, and get quiet. So, we all—I was sitting on the table when they came in.

Q. All right. Now, Miss Tibbs, you say some men came in. How many men were there?

A. It was four.

Q. Four men?

A. That's right.

Q. Do you recognize any of those men as persons now here in the courtroom?

A. Yes, sir, I do.

Q. Will you indicate them for us, please?

[fol. 144] A. Mr. Meyes and Mr. Douglas there.

Q. Mr. Meyes and Mr. Douglas, the defendants?

A. Yes, sir.

Q. Now, Miss Tabbs, just wait for the questions and then answer them, if you will, please. We will get along much faster.

You speak of the defendants by names. Insofar as the defendant Douglas is concerned, did you know his name before the 10th of October, the date of this crap game?

A. Douglas?

Q. Douglas.

A. No, I didn't.

Q. To your knowledge, had you ever seen Mr. Douglas before that time?

A. Well, I don't think I had.

Q. Insofar as Mr. Meyes is concerned, did you know his name before the 10th of October?

A. I sure did.

Q. Had you ever seen him before that date?

A. Yes, sir, I had.

Q. Now, which one of these men is it that you first noticed in the room?

A. That I first noticed that came in the room were Mr. Meyes.

Q. All right. At that time did he have something in his [fol. 145] hand, ma'am?

A. He did.

Q. What was that?

A. It was a gun.

Q. All right. And you told us before that one of the men said something about "Keep quiet; this is a stick-up." Who was it that made that statement?

A. Well, I don't know just exactly what one of them were, because they were all saying the same thing. "Everybody be quiet. This is a stick-up."

Q. Now, did you, later on, notice Mr. Douglas?

A. I did.

Q. Did Mr. Douglas have anything in his hand?

A. He sure did. He had a pistol, too.

Q. Then, after they came in and told everyone to be quiet, what is the next thing that was said or done there?

A. Well, they pushed the door to close the door because the door were open. They closed the door and Mr. Meyes got on the door, got next to the door that's going out, so he says, "Give me your pocketbooks."

Q. Now, who said—

Mr. Carr: Pardon me just a moment, your Honor.

The Court: I didn't follow that. I think she let her voice drop or something.

Mr. Carr: She appears to be suffering from a cold.

[fol. 146] Q. Miss Tubbs, will you keep your voice up?

A. I will.

Q. Higher, please. I know it is a strain to do so, but do the best you can.

The Court: Now, will you read the last answer.

(Record read by reporter.)

The Court: All right.

By Mr. Carr:

Q. Now, was Mr. Douglas and the other two men inside the room at that time, too?

A. Yes, sir.

Q. Now, as to these other two men, did they or either one of them have anything in their hand?

A. Yes, sir, they did.

Q. Both of them?

A. Yes, sir.

Q. What was it they had?

A. They had a gun.

Q. They each had a gun?

A. Yes, sir.

Q. Now, you told us that someone said, "Give me your pocketbook."

A. Yes, sir.

Q. Now, did you see anybody give them anything?

A. Yes, I did. I was the first one.

Q. All right. What did you give them?

A. I gave them a pink pocketbook, a little hand pocketbook [fol. 147] about that long (indicating).

Q. Was there any money in it?

A. Yes, sir, it were. It was twenty or twenty-two dollars in it.

Q. All right. Now, you gave that pocketbook to them because you were in fear of the gun?

A. That's right.

Q. Now, do you remember who the man was that you gave that little pink pocketbook to?

A. I do.

Q. Who was it, please?

A. He isn't here.

Q. Oh. In other words, it is one person that is not here at the present time?

A. Yes, that's right. Jackson.

Q. A man by the name of Jackson?

A. That's right.

Q. Since that time you have seen Mr. Jackson. I mean, since the 10th of October, 1958, you have seen Mr. Jackson, have you?

A. I have.

Q. And you testified in court in his trial?

A. Yes, sir.

Q. Now, you told us about you giving the pocketbook. Let me ask you this question: Do you know a man by the name of Mathe, M-a-t-h-e, Smith?

[fol. 148] A. Yes, sir.

Q. Was Mr. Smith in the room at the time?

A. Yes, sir.

Q. Do you know a man by the name of—let me spell it out this way—M. C. Smith?

A. That's right.

Q. Was he in the room?

A. Yes, sir, he were.

Q. Did you see whether anything was taken from Mr. Mathe Smith or whether Mr. Mathe Smith gave anything to these four men that were in the room?

A. Well, yes, I did.

Q. All right. Now, what happened in that connection, ma'am?

A. Well, he didn't want to give up the billfolder, and he

tussled against the man, keep from taking it, and he hit him aside the head with the gun.

Q. Now, who was the man that he was tussling with?

A. That one there (indicating).

Q. Now, that one there.

A. That man sitting there on the end.

Q. The light brown suit?

A. Yes, sir.

Mr. Carr: May the record show the witness indicated the defendant Douglas.

By Mr. Carr:

Q. Who was it that hit Mr. Mathe Smith in the head [fol. 149] with the gun?

A. (Indicating.)

Q. Mr. Douglas again?

A. Mr. Douglas.

Q. All right. Now, did you see them take anything from Mathe Smith after he was hit with the gun?

A. His billfolder.

Q. Now, as to the other people that were in there, did you see them give these four men or any one of them any thing or see these four men or any one of them take any thing from any of the other men in there?

A. Well, after they made us all lie down, we was lying down, and I couldn't see them, all of them give their bill folders up to them, but I heard, says, "Put it in here. Give it here. Put it in here," and they had a sack they were putting the money in.

Q. A sack, did you say?

A. Yes, sir.

Q. Now, was there some more money in addition to the \$22 that was in your purse?

A. Yes.

Q. That was taken from you?

A. Yes, sir. I had a billfolder in my bosom. I had \$84 in it. That was the money that I carried there with me, and I was so sure they thought that w the last money I had, they taken the pink one, I knew I had that one, and [fol. 150] just as they started to go out, Mr. Meyes says to Mr. Jackson, says, "Did you get that woman's money?"

He says, "Well, you got her money. She says, say she got her money in her brassiere, under her left breast," he says.

Q. Then was happened, ma'am?

A. Well, he come on over and got it out.

Q. You let that man take the money because you were in fear?

A. Of course.

Q. Now, how much money was there? Was that in a container, too?

A. Yes, sir.

Q. How much money was in that container that you carried in your bosom?

A. Eighty eight or eighty four. It was eighty eight or eighty-four, I just remember.

Q. Everything that you have told us here happened in Los Angeles, is that correct?

A. Yes, it did.

Mr. Carr: Cross examine.

The Court: Mr. Douglas

Defendant Meyes: I have no lawyer, your Honor.

The Court: Mr. Douglas, do you have any questions?

Mr. Meyes, do you have any questions?

Defendant Meyes. We are not ready for trial.

The Court: Very well. Then, you may step down. May [fol. 151] Miss Tubbs be excused?

Mr. Carr: Yes, your Honor. She may be excused.

The Court: Any objection to excusing Miss Tubbs? Very well, you are excused, Miss Tubbs.

(Witness excused.)

Mr. Carr: I have sent for the next witness, your Honor.

JANIE MAE BOOKER, called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your full name.

The Witness: Janie Mae Booker.

Mr. Carr: The testimony of your Honor please, of this witness will be directed - acts 4 and 13.

The Court: Very well.

Direct examination.

By Mr. Carr:

Q. That is Mrs. Booker, is it not?

A. That's correct.

Q. Mrs. Booker, what is your business or occupation?

A. Well, I own a record shop on Central Avenue, at 744 Central, and I own a restaurant at 8763 South San Pedro.

[fol. 152] Q. When you speak of a record shop, is that a phonograph record shop you speak about?

A. That's correct.

Q. Now, Mrs. Booker, inviting your attention to the 24th of September, 1958, did something unusual happen at your record shop that day?

A. Well, now about the dates I can't remember, you know, the exact date.

Q. Well, was it sometime in the month of September, about the middle—

A. That's correct.

Q. —of 1958?

A. That's right.

Q. Where was it that it happened?

A. In the record shop.

Q. Can you tell us about what time of day or night that was?

A. Well, now, I'm a little mixed up on that. I had two robberies, one was at night and one was at 1:00 o'clock in the day, but the dates, I don't know the dates.

Q. All right. Well, now, at least one of them happened about the middle or so of September of 1958, is that correct?

A. That's right.

Q. Whether that particular one was in the daytime or the evening you do not remember at this time?

[fol. 153] A. That's right. I do not remember.

Q. But it was either one or the other?

A. That's right.

Q. All right, now, at the time just immediately before this robbery that you speak about happened, was there anyone else in the store with you?

A. That's right.

Q. Well, —

A. Now, the one that happened at 1:00 o'clock in the day, it was two more people there with me, a man and a woman.

Q. All right. What was it that occurred at that time that caused you to believe that there was a robbery?

A. Well, I was sitting behind the counter, and this man and woman was sitting at the counter, and two men walked in and one of them put a gun on me and said, "Freeze, lady." Well, I looked at him, decided I try to talk to him.

Q. Just a moment, please. Now, I want to ask you, do you recognize that man as someone now in the courtroom?

A. That put the gun on me?

Q. Yes, ma'am.

A. Yes, I do.

Q. Will you indicate him to us, please.

A. Yes, I will.

Q. Who is he, please?

[fol. 154] A. This man here on the end.

Q. The one closest to you?

A. Yes.

Mr. Carr: Indicating for the record the defendant Douglas.

Q. All right, now, he said, "Freeze," and so on.

A. He says, "Freeze, lady," and I went to try to talk to him, and he says, "I said freeze, lady." So, I said, "Well, don't kill me. I'll give you what I got." So, then he marched me out into the other side into another little room.

Q. Now, as to—strike that.

Did another man come in then?

A. Another man was with him.

Q. Oh.

A. When he came in.

Q. All right. Now, as to the other man, not the one that told you to freeze, but the other man, do you see him here in the courtroom now?

A. Yes, I do.

Q. Will you point him out to us, if you will, please.

A. Yes. The man over there on the end.

Q. The man in the gray jacket?

A. Yes.

Q. All right, indicating the defendant Meyers. All right, [fol. 155] now, you were marched by—by the way, the man

that you pointed out as the defendant Meyes, did he have anything in his hand?

A. Well, if he did, I didn't see it.

Q. All right. Now, as to Mr. Douglas, did he have anything in his hand?

A. This one over on this end is the one that had the gun on me.

Q. Now, you told us about being marched someplace. Now, where were you marched to?

A. Well, I was marched out of the part where you sell the records into another little room, into a back room, and he told me to get my purse.

Q. When you speak of "he," who are you talking about, ma'am, the first—

A. The first one. The first one told me to get my purse. So I was looking for the purse. Then the one on the other end said, "Don't fool around with her. Kill her."

Q. That is Mr. Meyes said, "Don't fool around with her. Kill her"?

A. Yes.

Q. Go ahead.

A. So, I kept looking for the purse and finally I got a purse. It wasn't the right purse, because I had another one there because I had been robbed before. So, then, by [fol. 156] this time this man on the far end was in the record part looking, and he says, "I got it, man. Let's go."

Q. That was Mr. Meyes said, "I got it, man. Let's go"?

A. I don't know who Mr. Meyes—it was the man on the end.

Q. Indicating the defendant Meyes. Go ahead.

A. And so this other one says, "Well, it's more money. It's more money." He says, "Get the money." The little one, the one on this end. And I said, "Well, I don't have any more money." I says, "I had some money but another lady's come and got the money."

So, he said, "Let's go, man." And that time they ran out the door.

Q. How much money was there, ma'am?

A. Well, it was over \$100. I'd say maybe about \$120 or something like that. I'm not too sure now, but it was over \$100.

Q. Now, that happened here in Los Angeles, did it?

A. 7404 Central.

Q. All right. Now, you told us about you were robbed twice.

A. Yes.

Q. Now, this time that you are speaking about that you just told us about, was that the first or the second time that [fol. 157] you were robbed?

A. That was the second time.

Q. All right. Now, I am going to direct your attention, please, to sometime about the latter part of June, 1958. Were you robbed at sometime then?

A. Well, as I believe told you, I don't know the dates.

Q. Well, I did not ask you the date, ma'am. I said some time about the last part of June.

A. Well, I can't remember that.

Q. Well, about how long before the second time was the first time?

A. It looked like about maybe two or three months.

Q. All right. Now, where were you at the time of the first robbery?

A. In the same place, sitting on the chair behind the counter.

Q. Same record shop?

A. That's correct.

Q. I believe you indicated before that that first one would be either in the afternoon or the evening, you do not remember.

A. That one definitely yes, I know it was at night.

Q. All right. Fine. Now, at that time how many men came into your place?

A. Two.

[fol. 158] Q. As to those two men, do you recognize them as someone now in the courtroom?

A. Yes, I do.

Q. Would you indicate them to us, please?

A. The two men sitting there.

Mr. Carr: Indicating the defendant Douglas and the defendant Meyes, for the record.

The Witness: Yes.

By Mr. Carr:

Q. Now, did these two men or either of them have anything in their hand?

A. Yes.

Q. What was it, please?

A. They both had guns that night.

Q. All right. Now, did they or either one of them say anything to you when they came in?

A. Well, first, as I say, I was sitting on the chair, and I looked out the screen door and I seen the two men standing there. This one here was in front first.

Q. That is the one with the brown jacket?

A. Yes.

Q. Indicating Douglas. Go ahead.

A. He was in the front and he pulled his gloves on, then when he walked in the door, he put a handkerchief over his face like this. (Indicating.) He says, "This is a stick up." And so, he said, "Come on out." And by that time, then the one behind put the gun in Mr. Williams' side. Mr. [fol. 178 a] Williams is my partner in this business. He was sitting facing me, talking to me, but I didn't tell him anyone was coming in because I was afraid that they would shoot. So, he put the gun in Mr. Williams' and marched in the room. The other one marched me and then they tied us up. First, he made Mr. Williams stand with his hands on the wall and took everything out of his pocket. The one on the end did that.

Q. Indicating Meyers. Go ahead.

A. And this little one had the gun on me. Then they tied us up, and then they ransacked the place and took what they could take; got the money from the cash drawer and the money from a little container I had beneath the counter. Then they left by the way of the back door.

Q. How much money was taken at that time?

A. Well, I don't know the exact amount, but it was about one hundred and—maybe \$100.

Q. All right. Now, that money was taken because you were in fear, is that right?

A. Because I was in fear.

Q. Yes. Were you in fear of the guns that

A. Sure.

Q. Now, you told us that the one seated close to you, that

is closest to you, the one in the brown jacket, you saw him put a mask on his face?

A. Well, he had the handkerchief tied behind triangle [fol. 159] like. Then just raised it up like this (indicating).

Q. But you saw his face before he raised it?

A. Yes.

Q. All right. Now, as to the other man, the man seated farthest from you, Mr. Meyes, did he have anything on covering his face this first time?

A. No, he did not.

Q. And this first time that you told us about, that happened here in Los Angeles?

A. Same address, 7404 Central.

Mr. Carr: Thank you. Cross examine.

The Court: Any questions?

Defendant Meyes: We have no lawyer to cross examine these bookmakers and these gamblers who are being used by the police department to send us to the penitentiary. We still demand a lawyer to defend us in this trial here. We aren't ready for trial.

The Court: Very well.

Defendant Meyes: These people are bookmakers and gamblers.

The Court: All right. There being no cross examination, you may step down.

Mr. Carr: This witness may be excused.

The Court: Very well. Mrs. Booker, you are now excused.

(Witness excused.)

[fol. 160] The Court: We will take the recess at this time.

Ladies and gentlemen of the jury, you are admonished it is your duty not to converse among yourselves or with anyone else on any subject connected with the trial or to form or express any opinion thereon until the cause is finally submitted to you. We will take a ten minute recess.

(Recess.)

The Court: Let the record show all jurors are present, the defendants and the District Attorney. Call your next witness.

LOUISE ADAMS, called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Take the witness stand and please state your full name.

The Witness: Louise Adams.

The Court: Eloise?

Mr. Carr: Louise, L-o-u-i-s-e, your Honor.

The Court: Oh, Louise.

The Witness: Louise Adams.

The Court: All right. Now, would you pull that microphone a little closer. That is fine.

Mr. Carr: The testimony of this witness, if your Honor please, will be directed towards Counts 9, 10 and 11.

[fol. 161] Direct examination.

By Mr. Carr:

Q. Mrs. Adams, inviting your attention to the 21st of July, 1958, were you in a business establishment on Central Avenue here in Los Angeles sometime that day?

A. Yes, I were.

Q. What kind of a place of business was that?

A. Record shop.

Q. Is that a — by record you mean phonograph records?

A. Yes.

Q. Where was that located, please?

A. At, on corner of 12th and Central.

Q. While you were in there, did something unusual happen?

A. Yes, it did.

Q. Will you tell us what that was, please?

A. Well, I had gone over there to collect some money from him for some — I had gone to collect some money for some dinners I had served there.

Q. You went to collect from him?

A. From Moses Forrest.

Q. Moses Forrest?

A. Yes. And he told me to go sit in the front a few minutes, and he would see me.

[fol. 162] Q. And were you seated in the front?

A. Yes. I was sitting in the front.

Q. Then did something happen while you were in front?

A. Yes. While I was sitting there three men came in.

Q. Now, as to those three men, to your knowledge had you ever seen them before?

A. I had never saw them before.

Q. All right. Now, they came in. Do you see those three men or any of them now in the courtroom?

A. I see just two of them.

Q. Will you indicate who the two are, please?

A. Bernie and I mean Douglas and Meyes.

Q. Now, you referred to these men as Douglas and Meyes. Did you know their names before that time?

A. No. I did not know their names.

Q. Now, as to the third man, did you know him at all before that time?

A. No. I never saw him or knew him.

Q. Did you later learn his name?

A. Yes.

Q. What did you learn his name to be?

A. Jackson.

Q. And insofar as Mr. Jackson is concerned, have you testified in court in the case against him?

[Col. 163] A. Yes, I did.

Q. Now, when these three men came in, did you notice whether any one of them or all three of them had anything in their hands?

A. No. When they walked in, they didn't have anything [I didn't see anything at the present].

Q. All right. Then what happened after they walked in?

A. Two of them passed by me. Mr. Meyes, he started to go, and he come from under his jacket with the pistol after the other two passed by me, and he was pointing the pistol at me.

Q. All right. Did he say anything?

A. He didn't say anything to me.

Q. Then what happened?

A. Then later on after the other two men went into the back, was a lady came in with a little girl about five years old, and when she came in, she was trying to tell me something. He told—Mr. Meyes told her to keep straight on into the back and then he told me to get up and go in the

back, and I told him, I said, "Well, I don't have any money. I don't have money." He said, "You go back there any way."

Then he rushed in there behind me.

Q. Okay. When you got into the back, did you see some people in back there?

[Vol. 164] A. Yes. It was some there.

Q. About how many people were there?

A. Well, it was about eight or nine men, I guess.

Q. All right. Now, when you got in there in the back after being ordered by Mr. Moses to go there, did you notice what, if anything, the men back there were doing?

A. They were making them throw their purses on the floor and get over in the corner.

Q. Who was making them throw their purses?

A. Jackson and Douglas, and Mr. Moses after he came in. He said, "Hurry up, hurry up, and get them up there."

Q. Now, when you were there in back and you saw these people throwing the purses on the floor, did you see whether or not Mr. Moses Forrest was back there?

A. Yes. He was back there.

Q. Did you see anyone else back there whom you know?

A. Well, I don't know many by their names. I just know them by the faces.

Q. Do you know a person by the name of Jim or James Dindap?

A. Yes.

Q. You knew Jim before?

A. Yes.

[Vol. 165] Q. Was he in that back room?

A. Yes, he was there.

Q. Did he throw his purse on the floor?

A. Yes, he did.

Q. Did you hear him say anything at the time he threw his purse on the floor?

A. Yes. He asked would they give the identifications back.

Q. And what happened?

A. Mr. Moses hit him across the forehead with the pistol and said, "That's his identification and get over in that corner and don't breathe."

Q. Then after the purses were thrown on the floor, what happened then?

A. One of them picked up the purses and pulled them in through a cap.

Q. And then what did they do?

A. And then they all back out and told them, "Don't nobody move," if they didn't want to get killed.

Q. Then did these three men leave?

A. They left.

Q. Was anything taken from you or did you give them anything?

A. I didn't give them anything.

Q. And this happened here in Los Angeles, did it?

A. That's right.

[fol. 166] Mr. Carr: Cross examine.

The Court: All right. Mr. Douglas, do you have any questions?

All right. Mr. Meyes, do you have any questions?

Defendant Meyes: Your Honor, we still like to have the benefits of an attorney to represent us. We are not ready for trial because, as we told you, Mr. Atkinson said he did not have time to prepare this case for court. Therefore, he could not read all the testimony involved in the—to read the testimony of these bookmakers and gamblers. We are not ready to put on a defense because we do not have a lawyer to represent us.

The Court: Probably is right. Now, do you have any questions on cross examination?

Having no questions, you may step down.

Defendant Meyes: Not ready for trial, your Honor.

Mr. Carr: May this witness be excused, then?

The Witness: Judge, your Honor, I want to say this: I'm not a bookmaker and a gambler. I works for my living.

The Court: Okay. You are excused, Mrs. Adams. Thank you very much.

(Witness excused.)

[fol. 167] ALEX. ARATO HATCH, called as a witness on behalf of the People, having been first duly sworn, examined and testified as follows:

The Clerk: Take the witness stand. Please state full name.

The Witness: Aaron Alfred Hatch.

The Court: Aaron?

The Clerk: Middle name?

The Witness: Alfred.

Mr. Carr: If your Honor please, Aaron Alfred Hatch, get the first name.

The Witness: Aaron.

Mr. Carr: The testimony of this witness will be directed to your Honor please, principally to Count 8 and secondarily, to Counts 6 and 7.

The Court: Your last name is Hatch, H a t c h, right?

The Witness: Yes, sir.

The Court: Say, Mr. Hatch, you look like you are comfortable in that seat now. Pull the microphone up just a little closer to you. I think that will work out fine.

This is directed to Count 8 and what other count?

Mr. Carr: Principally to Count 8 where this witness is alleged as the victim, and it will also be in connection [fol. 168] Counts 6 and 7.

The Court: All right. Proceed.

Direct examination.

By Mr. Carr:

Q. Mr. Hatch, directing your attention to the 25th of 1958, sometime that afternoon or early evening, were you at an address on South San Pedro Street here in Los Angeles?

A. Yes, I was.

Q. Where is that place located?

A. 61st and San Pedro.

Q. What is the establishment there? By that I mean a business building, a residence, an apartment house, office building or what?

A. It was just a building, a building.

Q. Is there some sort of a business establishment at that address?

A. Not supposed to be. Supposed to be gambling.

Q. All right. While you were there did something unusual happen?

A. Yes, it did.

Q. What was that?

A. Well, I was sitting in the rear and a man came in and said, "This is a sick up."

Q. All right. Now, when that man came in, did he come [fol. 169] in alone or was there someone with him?

A. Well, one man came in first.

Q. All right. Now, is that the man that said, "This is a sick up"?

A. Yes, it is.

Q. Do you see that man here in the courtroom?

A. No, I don't.

Q. Now, then, did someone else come in?

A. Another guy came in the rear.

Q. Came in the rear of the building?

A. Yes, he did.

Q. Now, the other guy that came in the rear of the building, do you see him here in the courtroom?

A. No, I don't.

Q. Now, inviting your attention to the defendants Douglass or Meyes, do you recognize either one of those men?

A. Mr. Meyes.

Q. All right. Now, where was it you first saw Mr. Meyes?

A. He was the last one to come in through the front.

Q. All right. When he came in, did he have anything in his hand?

A. Pistol.

Q. Now, then what were the total number of men that [fol. 170] came in?

A. Three.

Q. Did they each have pistols?

A. Yes, they did.

Q. Did any one of them say anything?

A. They said, "Get up against the wall."

Q. Was this in the back of the place?

A. Yes, it was.

Q. Fire. Did you get up against the wall?

A. Yes, I did.

Q. Now, do you know a man by the name of Henry Carroll?

A. Yes, I do.

Q. Was Mr. Carroll there?

A. Yes, he was.

Q. Was he in the back?

A. No, he was in the front, I believe.

Q. Were you and Mr. Carroll speaking at the time that the men came in?

A. No, we weren't.

Q. Did Mr. Carroll go to the back at the time that you did?

A. Yes, he did; time I did.

Q. At the time that you did is the first question.

A. I was in the back already.

Q. He came in later?

[fol. 171] A. Yes, he did.

Q. All right. Then what happened in the back?

A. They said, "Everybody get up against the wall and don't look around, and put your wallets on the table."

Q. Did you get up against the wall?

A. Yes, I did.

Q. Did you put your wallet on the table?

A. Yes, sir, I did.

Q. How much money did you have in your wallet?

A. \$5.

Q. Did you have anything else in your wallet at the time?

A. My regular papers, driver's license and

Q. Was that wallet your so and regular papers taken?

A. Yes, it was.

Q. Was that taken from you because you were in fear of the gun?

A. Yes, it was.

Q. Now, while you were there, did you hear any shots?

A. I heard three shots.

Q. Now, did you hear anything said just before the shots?

A. "If they move, shoot them."

Q. Who said that?

[fol. 172] A. I don't know who said that.

Q. One of the three?

A. Yes, it was.

Q. Now, did you hear Henry Carroll say anything or any one say anything to Henry Carroll?

A. Someone told him to move over against the wall.

Q. Did Carroll say anything?

A. He says something like, well, "He told me to go to this wall. He told me to go to this wall." Then I heard another shot.

Q. Now, did you see Mr. Carroll afterwards?

A. Yes, I did.

Q. Did he appear to you to have any wounds in him?

A. Yes, he did.

Q. And the wound was where, if you remember?

A. I believe it was in his chest and his arm.

Q. That accounts for one shot. Now, as to the other two shots, did you see where they went?

A. Well, one guy was - another guy came in late, and he tried to hide his wallet and he was pushed up against the wall and hit up along the head and shot went off.

Q. Was hit alongside the head with what?

A. Pistol.

Q. Now, inviting your attention to the defendant Douglas, [fol. 173] does he appear to be similar to either of the other two men that were there?

A. He's the only one I didn't actually see, recognize.

Q. Not as to recognition, but does he, Mr. Douglas, appear to be similar in build or coloring?

A. Yes. He's similar in build, yes, sir.

The Court: Would you read that answer back?

(Record read by reporter.)

Mr. Carr: Your Honor, there appears to be some mixup in the Clerk's Office concerning an exhibit. May I have just a moment, your Honor?

The Court: All right.

Mr. Carr: The exhibit we are interested in is introduced by reference in this case from another case, 208300.

The Court: All right. Mr. Hatch, so far as you know, have you ever seen the defendant Douglas before?

The Witness: No, I haven't.

The Court: Did these three men have any masks or disguises on their face?

The Witness: They didn't have any mask at all.

The Court: They what?

The Witness: No mask.

By Mr. Carr:

Q. Mr. Hatch, this individual that you stated was hit on the head with the pistol, did you see who hit him on the [fol. 174] head?

A. No, I didn't.

Q. Your face was to the wall?

A. He was pushed beside me and it happened right beside me. I was looking at him.

Mr. Carr: May the record show that I exhibited a document to each and both of the defendants? I have here what appears to be a chauffeur's license, State of California, your Honor, which is No. B1689911. I will ask that it be marked People's Exhibit 1 in these proceedings, and by way of reference, to keep the record straight, not only in this and in another, that this is a part of the exhibits in Superior Court No. 208300, being Exhibit 30 in those other proceedings.

Incidentally, your Honor, may I have permission to mark this 1 for identification?

The Court: Yes.

By Mr. Carr:

Q. Mr. Hatch, I show you People's 1 for identification. Will you examine that chauffeur's license and tell us whether or not you recognize it?

A. This is mine.

Q. Was that the chauffeur's license that was in your wallet at the time that you told us about?

A. Yes, it is.

Q. And the one that was taken by these three men at the time?

[fol. 175] A. That's right.

Mr. Carr: Cross examine.

The Court: Mr. Douglas, any questions?

Defendant Douglas: We're not ready for trial, your Honor.

The Court: Very well. Mr. Meyes.

Defendant Meyes: I ask the Court again to grant us our United States Constitutional rights and our civil rights to have an attorney to represent us at this proceeding. As your Honor well knows, we are not lawyers, and we cannot defend ourselves. We are not ready for trial. We need someone who has the time to read these transcripts in order to present a fair case to the jury whereby they can hear our side as well as the prosecution's side.

The Court: Very well. All right. If there are no questions, you are excused, Mr. Hatch.

Mr. Carr: This gentleman may be excused then, your Honor.

The Court: You are excused.

(Witness excused.)

HENRY CARROLL, called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your full name.

The Witness: Henry Carroll.

[fol. 176] Mr. Carr: For the Court's information the testimony of this witness will be directed principally to Counts 6 and 7, and, secondarily, to Count 8.

The Court: Very well.

Direct examination.

By Mr. Carr:

Q. Mr. Carroll, inviting your attention to the 25th of July, 1958, at some time that early evening of that date were you at an address on South San Pedro Street?

A. I was.

Q. And while there did you see the witness that was just on the stand, Mr. Aaron Hatch?

A. Yes.

Q. While you were there at that address, did something unusual happen?

A. Yes, it did.

Q. Will you tell us what that was, please?

A. Well, late that evening we was standing in the front

room, bunch of us, seven or eight of us in the front room, and then stepped in the door, front door, and told everybody to be quiet, that this was a holdup.

Q. All right. Now, do you see that man now in the courtroom?

A. Yes, I do.

Q. Will you indicate him to us, please?

[fol. 177] A. Over there, Willy Meyes.

Q. Now, did you know you say Willy Meyes. Now, I will go and stand behind two men over here on this side of the courtroom and you indicate when I am standing behind the right one. Is this the one that you are indicating?

A. No.

Q. I am standing behind the second one. Is this the one you are indicating?

A. That's the one.

* Mr. Carr: May the record show the witness has indicated the defendant Bennie Meyes.

The Court: Bennie Meyes.

By Mr. Carr:

Q. Now, did Bennie Meyes have anything in his hand at the time?

A. Yes. He had a gun.

Q. All right. Then what is the next thing that happened, sir?

A. Well, he told—excuse me. He told all of us in the front room, he say, "Get on back in the back." Said, "This is a holdup," and he crowded us all back in the back room.

Q. Now, when you got into the back room, did you see any other people there?

A. Yes. Two more in the back room when we got back there.

Q. All right. Now, as to those two men, did they see [fol. 178] either of them have a gun?

A. Yes, both of them had guns.

Q. All right. Now, do you see anyone else in the courtroom now that resembles either one of those two men?

A. Yes. This one over here resembles one of the other was in that

Q. Then, indicating the man in the lady's brown jacket?

The Witness: Yes.

Mr. Carr: Was the second show he has indicated the defendant? *Witnesses.*

Q. Now, you got in the back room. Then what happened, sir?

A. They had us all lined up on the wall, by the building, and lined us all up on the back wall on the wall over on this side, the right wall.

Q. You say a tin building?

A. Yes. Tin building in the rear.

Q. Yes.

A. And they were searching everybody, taking their belt-bills, and money off them, laying it on the table.

Q. Was anything taken from you?

A. Yes, it was.

Q. What was that, sir?

A. It was my money and purse.

Q. How much money was there?

The Witness: A. Oh, around \$200.

Q. Was that taken from you because you were in fear of the man?

A. Yes.

Q. All right. Now, after your money had been taken from you, what then happened?

A. Well, after they searched me, I was standing at the back of some people. I couldn't get to the wall, and I was standing behind them with my arms up, and after they taken my billfold and money, they told me to move over there; search the back wall and told me to move over there. I turns to go over there, and the one standing in the door say, "Where you going?" I say, "Well, that man told me to get over there."

He said, "Get back over there." Boom, and shot me.

Q. All right. Where did he hit you, sir?

A. Well, it hit me here and came out my arm. (Indicating.)

The Court: I did not see where you indicated.

The Witness: Well, it hit me right here (indicating).

The Court: He is indicating the center of the chest about a little above the—

Mr. Carr: Well, I would estimate it about an inch or two above the top of the nipple, center of the chest.

The Witness: Right here is where the bullet hit. (Ind. [tot. 180] pointing.)

Mr. Carr: Pointing out the scar.

The Court: All right.

The Witness: And came out my arm right here (ind. pointing).

Mr. Carr: And indicated that the bullet came out on the left arm, about midway on the upper left arm, let's say, to the outside.

The Court: Very well.

By Mr. Carr:

Q. All right. Then, what happened?

A. Well, after they shot me, why, I was bleeding pretty bad and they gathered up, finished searching as quick as they could, and gathered up all their billfolds and things they had on the table and they left; and when they went out the back door, they said, "Don't nobody stick their head out here for ten minutes or more or you're going to get killed," and they left. Then they rushed me on up to 77th Police Station. They carried me from there to the receiving hospital and from there to General Hospital.

Q. I see. This money and your wallet, that was taken from you because of fear, is that right?

A. With three guns pointed on you, what could you do?

Q. What you told us about happened here in Los Angeles?

A. Yes, sir, it did.

[tot. 181] Mr. Carr: Cross examine.

The Court: Mr. Douglas, do you have any questions?

Mr. Meyes:

Defendant Meyes: Not ready, Your Honor.

The Court: Very well. Is there any reason why Mr. Carroll should not be excused?

Mr. Carr: Yes, sir. You asked me if there was any reason? There is none.

The Court: I put it in the negative. My error. You are excused, Mr. Carroll. Thank you.

(Witness excused.)

FRANK STEVENSON, called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Take the witness stand. Please state your full name.

The Witness: Frank Stevenson.

Mr. Carr: If your Honor please, the testimony of this witness will be directed to Count 5.

The Court: Very well.

Direct examination.

By Mr. Carr:

Q. Mr. Stevenson, inviting your attention to the 16th of August of 1958, were you at a place on South Hemlock here [fol. 182] in Los Angeles?

A. Yes, sir, I were.

Q. Was that your place of business?

A. Yes, sir.

Q. What kind of business was it, sir?

A. Dye and Shine stand.

Q. A dye and shine?

A. Yes, sir.

Q. Did something unusual happen sometime during the day?

A. Yes, sir. It did.

Q. What was that?

A. I was robbed.

Q. About what time during the day was that?

A. Approximately 5:30 or 6:00 o'clock.

Q. In the evening?

A. Yes, sir.

Q. All right. Now, how many persons took part in this robbery?

A. Well, two came inside and there was one standing outside, as far as I can remember.

Q. Now, there were a total of three, then?

A. Yes, sir.

Q. Now, as of those three, do you see them or any of them now in the courtroom?

A. Yes. I see two of them.

[fol. 183] Q. Will you indicate them for us, please?

A. The two men sitting there.

Mr. Carr: Indicating for the record the defendants Meyers and Douglas.

Q. Now, did either of these defendants—strike all of that.

Is either or one of these defendants the man that remained outside or did both of these men come inside?

A. Both of them came inside.

Q. Now, did they come in together or did one come in ahead of the other?

A. Well, I was sitting behind the counter I have there, and I wasn't paying too much attention who came in first. I looked up; Douglas was walking towards me with a pistol in his left hand and Meyer was standing at the door with the revolver in his right hand.

Q. All right. Did either one of these men say anything to you?

A. Yes, sir.

Q. What was it that was said?

A. Douglas walked behind the counter where I was sitting and says, "Where's that God-damned money?"

I said, "It's in my left-hand pocket." So he stuck his hand in my pocket and taken the money, looked at it and said, "Where's the rest of it?"

I says, "That's all I got. I've been hit."

[Vol. 184] He said, "If I thought you were lying, you would be hit between the eyes," he said.

Q. Now, how much money was that?

A. Approximately one hundred and thirty to one hundred over one hundred—about between one hundred thirty and one hundred seventy dollars.

Q. \$130 and \$170?

A. Yes, sir.

Q. Did you permit that money to be taken from you because you were in fear?

A. Yes, sir, I was. Yes, sir.

Q. After this money was taken from you, what did these men do?

A. Backed out. He backed out from behind the counter, backed to the front door and they left and turned off on Hemlock.

Q. Did you follow them out?

A. Well, after they had gone for—I come out shortly after that.

Q. What you told us about happened here in Los Angeles?

A. Yes, sir.

Mr. Carr: Cross examine.

The Court: Mr. Douglas?

Defendant Douglas: We're not ready.

The Court: Mr. Meyes.

[fol. 185] Defendant Meyes: We are not ready, your Honor.

The Court: Very well.

Mr. Carr: This witness may be excused, your Honor.

The Court: All right. You are excused, Mr. Stevenson.

The Witness: Yes, sir.

(Witness excused.)

Mr. Carr: I have a witness available. I am just wondering—

The Court: Well, I think it would be better to finish. It is only a couple of minutes to 12:00.

Ladies and gentlemen of the jury, you are admonished it is your duty not to converse among yourselves or with anyone else on any subject connected with the trial or to form or express any opinion thereon until the cause is finally submitted to you.

We will take the recess until 1:45.

Mr. Carr: If your Honor please, would the Court remain so we can bring the witnesses in and have them instructed?

The Court: Yes. The jurors are now excused until 1:45.

Mr. Carr: Your Honor instruct the witnesses, please?

The Court: All witnesses in the case of People against Douglas and Meyes, all witnesses except those who have been specifically excused, are instructed to return at 1:45 [fol. 186] without any further order, notice or subpoena. 1:45.

(Whereupon an adjournment was taken until 1:45 p.m. of the same day.)

[fol. 187] Los Angeles, Calif. Thursday, October 1, 1959.
1:47 P. M.

The Court: Let the record show all jurors present, the defendants and the District Attorney. Proceed.

Moses Forrest, Jr., called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your full name.

The Witness: Moses Forrest, Jr.

The Court: Moses Forrest, Jr.

Mr. Carr: That is F-o-r-r-e-s-t, is that right?

The Witness: That's right.

Mr. Carr: If your Honor please, the testimony of this witness will be directed principally to Count 9 and, in addition thereto, to Counts 10 and 11.

Direct examination.

By Mr. Carr:

Q. Mr. Forrest, inviting your attention to the 21st of July, 1958, did you have a record shop, that is, a phonograph record shop?

A. I did.

Q. Where was that located?

A. 1206 South Central Avenue

[fol. 188] Q. Here in Los Angeles?

A. Yes.

Q. On the 21st of July of last year did something unusual happen in your record shop?

A. Yes, it did.

Q. About what time was that, sir?

A. Around 6:00 o'clock in the afternoon.

Q. Where were you at the time that you first had noticed that this unusual thing was happening?

A. I was in the back room of my shop.

Q. The back room of your shop, sir? And what was it that brought your attention to this unusual situation?

A. Well, man came in and I looked, he put a gun in my back. He said, "Give me everything you have."

Q. Is that all he said?

A. He said, "Give me everything you have, or if you don't, I'll kill you."

Q. Did you notice that individual?

A. At that particular time all I know is the small Negro-American, but I was excited at the time, couldn't positively identify him, but all I know, he was a Negro.

Q. Did you notice anything unusual about his face other than he was a Negro?

A. Seemed to me that he had a scar on his face.

Q. You have indicated on the right side of the face about on the cheek bone, is that it?

[fol. 189] A. I can't recall what side of the face. I think it was scar on his face.

Q. Now, inviting your attention to the defendant Meyes, the man who is seated farthest from you at the counsel table there, does he look similar to or different from that particular fellow?

A. Well, short fellow like him, but I couldn't definitely say it was him.

Q. Now, was he alone or was there someone with him?

A. No. There were two more fellows.

Q. All right. Now, as to the two more fellows, did you see them?

A. Yes. I think one was slightly tall; one was medium but, as I said previously, I was excited at the time because that was the first time I ever had a gun put on me.

Q. Now, do you know Louise Adams that testified here?

A. Yes, I do.

Q. Was Louise Adams in your place at the time that you are now telling us about?

A. Yes, sir, she was.

Q. Now, after the gun was—by the way, before I leave that, do you know a Jim or James Dunlap, D-u-n-l-o-p?

A. Yes, I do.

Q. Was he at your place at the time that this happened?

[fol. 190] A. Yes, he was.

Q. All right. Now, after the fellow put the gun on you, stated what you told us, what is the next thing that happened after that?

A. Well, as I recall, told everybody to put the wallets on the floor, get in the back, in the back room.

Q. Did you put your wallet on the floor?

A. No. I took the money out of my front pocket. I didn't take the wallet out of my rear pocket.

Q. You took the money out of your front pocket?

A. Yes.

Q. What did you do with that money?

A. I gave it to the man that put the gun on me.

Q. All right. Then what did you do?

A. Then I went to the rear with the other people.

Q. How much money was that?

A. I think about \$120, something like that.

Q. Did you give that man \$120 because you were in fear?

A. Yes, I did.

Q. Now, when you got into the back, did you hear Jim Dunlap say anything?

A. Yes. He asked the man for his identification out of his wallet.

Q. Then what happened?

[fol. 191] A. Seen, heard a noise. After the men left I saw blood on his forehead where he had hit him over the head with a gun.

Q. Saw blood on whose forehead?

A. Jim Dunlap.

Q. Now, as to these other men that were there, the other two men, did you notice whether or not they had any guns in their hand?

A. Yes. I think all three of them had guns.

Q. Everything that you told us about here happened in Los Angeles, did it?

A. Yes, it did.

Mr. Carr: Cross examine.

The Court: All right. Mr. Douglas, do you have some questions?

Defendant Douglas: Your Honor, I'm not ready without proper counsel.

The Court: Mr. Meyes, do you have any questions?

Defendant Meyes: I demand a lawyer to cross examine these bookmakers and gamblers. They are falsely testifying.

The Court: Very well.

Defendant Meyes: Not ready for trial.

The Court: There being no questions, Mr. Forrest, you are excused.

The Witness: Thank you.

(Witness excused.)

[fol. 192] M. C. SMITH, called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Take the witness stand.

The Court: Sit up there and sit back and pull the microphone up so it is about six inches from your chin.

The Clerk: Please state your full name.

The Witness: M. C. Smith.

Mr. Carr: The testimony of this witness, your Honor, will be directed principally to Count 3 wherein this witness is alleged as a victim, and Counts 1, 2 and Count 12.

Direct examination.

By Mr. Carr:

Q. Mr. Smith, what is your business or occupation?

A. Well, I work for Los Angeles County in the, out of the electrician shop?

Q. Out of the electrician shop?

A. Yes.

Q. Keep your voice up, if you will, a little bit, please. Do you know a Mr. Mathe, M a t h e, Smith?

A. Yes, I do.

Q. Is he related to you?

A. That's my father.

Q. Do you know a Miss Fanny Tubbs?

A. Yes, I know her.

[fol. 193] Q. Now, inviting your attention to the 10th of October, 1958, were you and your father and Fanny Tubbs in some address on South Central Avenue?

A. Yes, we was.

Q. In addition to the three of you, were there other people there?

A. Well, it was some more peoples there, but I don't—

Q. While you were there did something unusual happen?

A. Yes, it did.

Q. You tell us what it was.

A. Well, just was some guys, was ~~one~~ guy was going to go out of the door and so—

Q. One what, sir?

A. It was one guy that was on the inside behind the door and some more guys rushed in.

Q. Now, some more guys rushed in. About how many of them were there?

A. I really—I think about three or four, I imagine, some thing like that.

Q. Then what happened?

A. Well, there was a stick-up.

Q. These three or four guys, did you notice whether they had anything in their hands?

A. Well, they had guns in their hands.

[fol 194] Q. All right. And they said, "This is a stick-up." What else did they say, if anything?

A. Well, say, "Put your head to the wall, turn your face to the wall, don't look around."

Q. Did you do that?

A. Yes, I did.

Q. Then, what is the next thing that happened?

A. Well, we laid down on the floor, told us to lay down on the floor.

Q. Did you lay down on the floor?

A. Yes, I did.

Q. How did you lay on the floor, on your back, side or stomach?

A. We laid on our stomach.

Q. All right. Then what happened?

A. Just taken everything we had.

Q. Well, now, did they take anything from you?

A. Taken my wallet and some \$140.

Q. In your wallet?

A. Yes.

Q. Now, you let them take your wallet because you were in fear of the guns?

A. Yes, I did.

Q. Now, how about your dad, Mathe Smith. Did you hear anything or see anything happening to him?

A. Well, I heard him talking and was a little talking. [fol. 195] so I didn't even look around.

Q. Just hold it a minute. What was the last answer?

(Record read by reporter.)

By Mr. Carr:

Q. Did you hear your father say anything to these men?

A. Well, I heard him tell the guy don't put his hand in his pocket.

Q. Now, was Fanny Tubbs in there at that time, too, while this was going on?

A. Yes, she was in there.

Q. Now, as to these three or four men, did you look at them at all?

A. No, I didn't.

Q. Frightened, were you?

A. Yes, I was.

Q. You were scared?

A. I was.

Q. Everything you told us happened here in Los Angeles, is that right?

A. That's right.

Mr. Carr: Cross examine.

The Court: All right. Mr. Douglas? Mr. Douglas, do you have any cross examination?

Defendant Douglas: Not ready, not proper counsel.

The Court: Mr. Meyes.

[fol. 196] Defendant Meyes: Not ready for trial, your Honor. We don't have an attorney.

The Court: Very well. You may step down. You are excused, Mr. Smith.

Mr. Carr: Mr. Smith, if you will, please, as you leave will you ask your father to come in.

(Witness excused.)

MATHE SMITH, called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Take the witness stand.

The Court: All right, sit back and get comfortable and pull that microphone up.

The Clerk: Please state your full name.

The Witness: Mathe Smith.

Direct examination.

By Mr. Carr:

Q. What is your name?

A. My name is Mathe Smith.

Q. Do you know M. C. Smith?

A. Yes.

Q. Is he your son?

A. That's right.

Q. Do you know Fanny Tubbs?

[fol. 197] A. Yes, I know her.

The Court: Just a minute. Which count is this on?

Mr. Carr: Yes. My error, your Honor. The testimony of this witness will be directed towards Count 2 and Count 12 in particular, and Count 1 and Count 3.

The Court: All right.

By Mr. Carr:

Q. Now, on the 10th of October, 1958, were you in a hotel room with your son and Fanny Tubbs and some other people?

A. Sure was.

Q. Did something happen up there?

A. Sure did happen.

Q. Will you tell us what happened, please?

A. Well, some stick-up come in there, about four of them, I think it was, about four.

Q. All right.

A. I seen three of them but one was in the door, make four.

Q. Now, of those three or four, do you see any one of them or do you see the three or four here in the courtroom now?

A. Well, I only see about one of them. I see only about one.

Q. Would you point to the one that you now see?

A. The one that hit me on this side, hit me, took the money off me. That's the one that hit me.

[fol. 198] Q. All right. Now, you say on this side. Which one is it?

A. I don't know that one on that side, but this one hit me; I know about him.

Q. There are two men; you are pointing over there. One of them has a gray jacket on and the other has a brown one.

A. From a distance, on this side, I don't know his name now.

Q. All right. We will see if we cannot work it this way. Mr. Smith. I am standing behind one man. Is this the man you are talking about?

A. No. Not that one.

Q. Is this the one I am standing behind here?

A. Yes. That's the one that hit me.

Mr. Carr: May the record show the witness has indicated the defendant Douglas.

Q. Now, these men came in and did you notice whether they had anything in their hands?

A. Yes. They had something in their hands, they had wrapped around this way sticking out that way. (indicating.)

Q. Now, as to the part that was sticking out, what did it look like to you?

A. It looked like it might have been a gun, but when it hit me, it felt like one, I know, piece of iron or something. [fol. 199] I know it was.

Q. Now, the first thing I asked you,—you're going too fast for me. The first thing is what did it look like, the part that was sticking out?

A. Looked like a barrel of a gun.

Q. All right. Now, when did any one of those men say anything that came rushing in?

A. He said, I heard him say, "This is a stick-up." See, I didn't know nothing about the stick-up.

Q. They said it was a stick-up?

A. Yes.

Q. Then what did they tell you to do, if anything?

A. Well, tell us—they took my money and took the rest money.

Q. Now, did they let you stand up while they were taking your money?

A. No. Hit me and made me lay down flat on my face.

Q. Who was it that hit you?

A. This guy over here.

Q. Indicating the defendant Douglas?

A. Yes. I don't know his name.

Q. Well, I know that, but I am just telling it to the people here. He hit you where?

A. Hit me right on the side of my head here. (Indicating.)

[fol. 200] Q. Did it feel like something hard he hit you with?

A. I know it was something hard. I know it.

Q. What was it that—did you give him your money or some property or did he take it from you?

A. He took \$80 from me.

Q. \$80?

A. Yes.

Q. Was that because you were afraid of the gun?

A. I was still—I wasn't scared of him at all, I said to that boy of mine he would have killed me, I wasn't going to let him go in my pocket.

Q. Well. All right, now, let me start back a minute. At some time did any one of these three men reach for your pocket?

A. Yes, I wouldn't let them go in.

Q. Were you laying down at the time?

A. No. I was standing up at the time.

Q. All right. And he reached in your pocket and you wouldn't let him?

A. That's right.

Q. Then what happened?

A. Then he hit me with the pistol and told me to lay down, see. Then he went in the pocket and took the money, see.

Q. All right. Now, what did your son say to you?

A. He said, "Dad, let him have it." So that's all that [fol. 201] he said, "Let him have it."

Q. So you let him have it?

A. Yes. I had to let him have it or they'd have me.

Q. And you didn't let him have it because he was a friend of yours, did you?

A. No, I didn't. No.

Q. Because you had been hit?

A. Yes. I was hit and I would let him have it. Then they could take it then.

The Court: I didn't understand that last part.

The Witness: I was hit.

Mr. Carr: Just a minute. I hate to embarrass the reporter.

The Court: Would you read it please, Mr. Reporter?

(Record read by reporter.)

By Mr. Carr:

Q. Now, how much money was that, Mr. Smith?

A. It was \$80.00.

Q. When you got hit, what did it do, make a bump or open up your head or something?

A. Well, bleeding. The police carried me down in the doctor's office, see.

Q. Everything you told us about happened here in Los Angeles, is that right?

A. That's right.

[fol. 202] Mr. Carr: You may cross examine.

The Court: All right. Mr. Douglas, do you have any questions?

Defendant Douglas: I'm not ready for trial without counsel.

The Court: Mr. Meyes?

Defendant Meyes: Not ready, your Honor, for trial.

The Court: Same situation: Very well.

Mr. Carr: This witness may be excused.

The Court: All right. Mr. Smith, you are excused.

(Witness excused.)

[fol. 203] J. E. CHAMBERS, a witness called in behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Would you please state your full name.

The Witness: J. E. Chambers, C-h-a-m-b-e-r-s.

Mr. Carr: May the record show I proffered to the Defendant Meyes two documents?

The Court: Yes, it shall so show.

Mr. Carr: Incidentally, this evidence is as to the Defendant Meyes only and has reference to the three priors alleged which he has denied, your Honor.

The Court: All right. This evidence will relate only to Defendant Meyes and is not being received as to the Defendant Douglas at all.

Mr. Carr: I have here a fingerprint card, if your Honor please. May it be marked 2 for identification? I believe 2 is next in order.

The Court: Yes.

Direct examination.

By Mr. Carr:

Q. I invite your attention to People's Exhibit 2 for identification. I will ask you to examine that and tell us whether you have seen that before?

A. Yes, I have.

Q. When and where did you first see it?

[fol. 204] A. This noon at 12:14 p.m. this date, when I placed the fingerprints upon this card.

Q. Whose fingerprints did you place upon the card?

A. That of the defendant Bennie Meyes.

Mr. Carr: I have here a series of documents, if your Honor please, which have a letter of transmittal as the top document from the State of California, Department of Corrections. May this document, the series of documents, rather, be marked 3 for identification?

The Court: Very well.

Mr. Carr: I show you People's Exhibit 3 for identification and, in particular, to a fingerprint card that appears as one of the documents therein. I will ask you if you ever seen that?

A. I have.

Defendant Meyes: If your Honor please, now, the Court well knows that we are not lawyers. I don't know anything about my legal rights, and at noon well, we have no attorney to advise us concerning our legal rights. We don't know whether—I know that they have been taking advantage of us. Constitutional rights and civil rights

have been taken advantage of. The Court well knows that. We are not lawyers and we are not defending ourselves. How can we protect ourselves when we don't even know the terminology of law? We don't know what is going on. How can we do that?

[fol. 205] The Court: Let me take a look at these documents.

Mr. Carr: If your Honor please, the Court today, I believe yesterday at the bench advised the defendant Meyes that he was charged with three prior convictions of felonies and it was his right if he wished to exercise that right to admit the priors outside of the presence of the jury and the jury would not be advised of the fact of those priors. The defendant Meyes has refused to accept that right and privilege which your Honor accorded to him. Therefore, under the law we must go ahead and prove them up as we do other evidence in other material issues in this case.

Defendant Meyes: Your Honor, being completely ignorant of the law how would I know what is admissible as evidence in a court? I'm no attorney, I'm not defending myself. We do not have legal representation. Just being taken advantage of completely.

The Court: Very well.

Defendant Meyes: I would like to have an attorney to advise us concerning our legal rights.

The Court: That was the problem that we struggled with so long yesterday to have you not discharge your attorney, and you were advised of what the consequences might be if you discharged your attorney, in that you would have to act as your own attorney, in spite of that you determined to discharge your counsel.

Defendant Meyes: Discharge a man who had never read [fol. 206] the transcripts of the trial, never prepared his case for court. He was no lawyer to me. He was no attorney. We don't have—

The Court: He was well prepared regardless of what you say about it.

Defendant Douglas: He stated—

Defendant Meyes: The man stated himself that he was not properly prepared to defend us and take this case.

The Court: Now, if you have an objection to this ques-

tion that was asked, I will be glad to rule on the objection. Proceed.

Defendant Meyes: Your Honor, I would like the Court to take into consideration again 987a of the Penal Code which states that we are entitled to have an attorney, advice of an attorney, and have an attorney to represent us. I do not have an attorney. We are not represented. We are representing ourselves.

The Court: I have read that several times. The objection is overruled again. Proceed, Mr. Carr.

Mr. Carr: All right. I think the last question, I believe, sir, was, as to whether or not you have seen that fingerprint card which is a part of Exhibit 3 for identification.

The Witness: I have.

By Mr. Carr:

Q. Have you made a comparison—wait a minute. I am [Vol. 297] getting ahead of myself. I am sorry, sir. What is your profession?

A. Deputy Sheriff, Los Angeles County, Attached to the technical services division, identification.

Q. What specific phase of identification do you specialize in, if any?

A. Latent fingerprints.

Q. When you say—

A. Identification by fingerprints.

Q. Now, how long have you specialized in the subject of fingerprint identification?

A. For the past six years.

Q. What has been your study along that line, study and training?

A. Well, I have attended Los Angeles State College in a course in fingerprint identification. I have received special training by the Lieutenant, Sergeant and Chief Identification Clerk of the Sheriff's Department.

Q. What has been your experience in connection with fingerprint identification?

A. I have testified in the Superior Court of the State of California in excess of 100 times. And numerous times in Municipal Court throughout the County.

Q. Now, in connection with your studies and experience

in fingerprint identification, have you learned whether or not different individuals have the same fingerprints or whether there is any difference in that?

[fol. 208] A. There is distinct difference although we may have similar type patterns, each pattern has definite characteristics which make it an individual.

Q. All right. In connection with your studies and training, studies, and training experience in fingerprinting, has it ever come to your knowledge personally either through discussing the matter with fellow experts in the same line that you are in or through the examination of periodicals or books pertaining to the subject matter that at any time in recorded history that two individuals have had the same fingerprint?

A. I have never read of it myself.

Q. Ever heard of it?

A. No.

Q. All right. Now, directing your attention at this time to Exhibit 2, which is the fingerprint card that you say you rolled of the defendant Meyes, and to the fingerprint card, a part of Exhibit 3, have you made a comparison between those two documents?

A. I have.

Q. As a result of that comparison, have you arrived at any opinion or conclusion as to the similarity or dissimilarity of those fingerprints?

A. I have.

Q. May we have the benefit of your opinion, please?

A. It is my opinion that the fingerprint impressions appearing on both exhibits were made by one and the same individual and that of the defendant Meyes.

Mr. Carr: Thank you very much. You may cross examine.

The Court: All right. Mr. Meyes, do you have questions of this witness? Other than your previous objection.

Defendant Meyes: We are not ready for trial.

The Court: All right.

Mr. Carr: May this witness be excused?

The Court: Yes. You are excused.

Walter F. Bitterolf, called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your full name.

The Witness: Walter F. Bitterolf, Bachelor.

The Court: What was the first name?

The Witness: Walter.

The Court: What court is this in connection with?

Mrs. Carr: The first part of the examination, if your Honor please, will pertain specifically to Count 8. The balance of the testimony will pertain generally to all of the counts, your Honor.

The Court: All right.

[fol. 210] Direct examination.

By Mrs. Carr:

Q. Mr. Bitterolf, what is your business or occupation?

A. I am a police officer, City of Los Angeles, attached to the Robbery Division.

Q. Now, I show you here People's Exhibit 1 for identification. I will ask you to examine that and tell us whether or not you have ever seen it before?

A. Yes, I have.

Q. Pardon me just a moment, please. When and where did you first see that, that chauffeur's license?

A. I removed it from a wallet in the back bedroom of the apartment where William Douglas was arrested on October 20, 1958, shortly after 8:00 a.m.

Q. Was that bedroom a bedroom that was occupied? In other words, did William Douglas live there in that back bedroom?

A. Yes.

Q. Had you gone to that back bedroom alone or had you been accompanied by someone there?

A. I was alone at the time.

Q. That you went into the back bedroom?

A. That is correct.

Q. When you entered the premises, though, that is the strike that

[fol. 211] The premises consisted of something other than a back bedroom, did they not?

A. That is correct.

Q. Now, when I speak of premises, I mean the whole confines, when you entered the whole confines, did you enter there alone?

A. No, I did not.

Q. Did you go there with brother officers?

A. Yes, I did. Sergeant Gene Nash.

Q. Was that for the purpose of arresting the defendant Douglas and Meyes in connection with some robberies?

A. That is correct.

Q. Now, at the time either shortly before or after finding this identification did you see Douglas in that apartment?

A. Yes. I saw him shortly before that.

Q. Did you have any conversation with the defendant Douglas relative to robberies?

A. Yes, I did.

Q. What was said?

A. First asked him his name. He told me what it was. I asked him about

The Court: I think this should be restricted to the defendant Douglas.

Mr. Carr: Yes, your Honor.

[fol. 212] The Court: This testimony is received only as to the defendant Douglas and is not received as to defendant Meyes. Go ahead.

Mr. Carr: Proceed.

The Witness: I asked him questions about a man named Jackson. I asked him how many robberies he had been on. He said a whole lot of them. I asked him who he was with. He said with Bennie on most of them. "When we needed a third man, Jackson went along with us." I asked him where his gun was. He said he didn't have a gun. I told him I knew he didn't have a gun. I asked him where it was. He says, "You're going to find out anyway. Bennie got it. That's the gun he used to shoot the officer with." Says, "You'll find out that I had it in bond or in soak," words to that effect.

Q. Did you see Gene, Sergeant Gene Nash there?

A. Yes, I did.

Q. What was the condition of Gene Nash?

A. Semi-conscious.

The Court: Just a minute. I think we better have a conference at the bench. Will you come to the bench?

Defendant M^e: We are not lawyers. You might as well go ahead with it.

The Court: It is my purpose in asking the District Attorney and the defendants to come to the bench to seek counsel of counsel as to standing, and since the defendant fol. 214 do not desire to let the Court do that, I will have to go ahead.

Defendant M^e: If it increases the Court, I hate to keep whistling the Court's time. The Court well knows that we are not lawyers and we are not defending ourselves.

The Court: All right.

Defendant M^e: We have only been advised about a right of one constitutional right. We know that there are constitutional rights to have an attorney to represent us and it has been denied. The Court has denied us our constitutional right to have a lawyer.

The Court: That, I think, Mr. M^e, is no contest, and you agree it is not a contest, because yesterday we spent a great deal of time advising you of your legal and constitutional rights in pointing out the difficulties that you would be compelled to defend yourself in case you discharged your attorney.

Proceed.

Defendant M^e: Your Honor, we are not defending ourselves.

The Court: All right. Proceed, Mr. C.

By Mr. C.

Q. Did you notice whether or not Gene Nash had any wounds upon him?

A. Yes, I did.

Q. Did they appear to be bullet wounds?

A. Yes.

[fol. 214] Q. Did he subsequently pass away?

A. Yes, he did.

Q. Insofar as the defendant M^e was concerned, was

he in the apartment where you talked to the defendant Douglas?

A. Not at the time I talked to him. No.

Q. Do you know where—do you know when the defendant Meyes was apprehended?

A. Yes, I do.

Q. When was that?

A. Approximately that time or shortly after.

Q. In the vicinity there?

A. Approximately a block to a block and a half away.

Q. Did the defendant Meyes have any wounds?

A. Yes, he did.

Q. Incidentally, did Douglas have any wound or wounds?

A. Yes, he did.

Q. When Nash went in there, was he armed with a gun?

A. Yes, he was.

Q. You found Nash's gun, did you?

A. Yes, I did.

Q. Had Nash's gun been discharged?

A. Yes, it had.

[fol 215] Q. In addition to Nash's gun, did you find any other gun or were any other guns found around there?

A. Yes.

Q. What was that?

A. There was a .38 revolver just outside the bedroom window on the ground. There was also a .22 blank pistol found in a dresser drawer in a room occupied by William Douglas.

Q. Now, this .38 revolver, had that been discharged?

A. Yes, it had.

The Court: This .22 blank pistol, is that a pistol that what can it be used for?

The Witness: It is what is commonly known as a starter pistol.

The Court: Does it shoot only .22 blanks?

The Witness: That is correct.

The Court: All right.

Mr. Carr: You may cross examine.

The Court: All right. Mr. Douglas?

Defendant Douglas: I'm not ready for trial, your Honor.

The Court: Mr. Meyes?

Defendant Douglas: No counsel.

The Court: Same situation?

Defendant Moyes: Not ready for trial.

The Court: Very well.

[fol. 216] Mr. Carr: May this witness be excused?

The Court: Yes. You are excused. The officer says he was on vacation. They found him anyway. He apologizes for not having a tie.

The witness was excused.

Mr. Carr: At this time, if your Honor please, we will ask that the three exhibits heretofore introduced for identification be received in evidence insofar as the limited purposes indicated as to Exhibit 2 and 3 are concerned, that they be received for that limited purpose heretofore indicated.

The Court: I would like to take a look at the n. Exhibit 1 will be received in evidence and that, incidentally, is received by reference, Case No. 208300, being People's Exhibit 50 in that proceeding. Plaintiff's 2 will be received. Exhibit 3 will be received.

Mr. Carr: If your Honor please, we will rest at this time.

The Court: All right. I think we will take a recess at this time.

Ladies and gentlemen of the jury, you are admonished it is your duty not to converse among yourselves or with anyone else on any subject connected with the trial or to form or express any opinion thereon until the case is finally submitted to you. We will take a 15 minute recess at this time.

[fol. 217] COLLOQUY BETWEEN COURT AND DEFENDANTS

The jury excused.

The Court: The People have rested. Let the record show the jurors are not present in the courtroom. The People have rested, and as soon as the jury comes back will be the time for the defendants to produce any evidence that they desire to produce. I might state that you are not required to testify. This is a criminal proceeding and, obviously, in a criminal proceeding a defendant is not required to testify against himself, and I think you should be informed of that.

You do have the right to have some witnesses subpoenaed on your behalf. In the event they have not already been subpoenaed, we will serve the subpoenas if you will give us the name and addresses of the persons that you desire to have subpoenaed. I am wondering if you are ready to proceed at this time when the jury returns.

Defendant Meyes: Your Honor, as you well know, there is very little we can do under the circumstances, because I feel that the Court is prejudiced and the Court is biased in allowing this legal legend to continue. We do not have the necessary qualifications to defend ourselves. I informed the Court that I had talked with agents of the Federal Bureau of Investigation to investigate collusion between the police department and these gamblers and these bookmakers that had been appearing against us in court. Now, if it pleases the Court, I would like to ask again that the Court stop this illegal procedure and grant us the opportunity to have counsel to represent us.

The Court: Well, all right. After the recess, then, if you do not wish to present any evidence, why, then, the matter will then be closed; that is, as far as the evidence. Then the District Attorney can argue it and each of you can argue on your behalf, and the Court will instruct the jury. We will take a ten minute recess.

(Recess taken.)

The Court: Let the record show all jurors are present, the defendants and the District Attorney.

All right. Mr. Douglas and Mr. Meyes, the People have rested, and this is the time to put on any evidence that you desire to put on. Mr. Douglas, do you have any witnesses you desire to call?

Defendant Douglas: We are not ready, your Honor. We do not have proper counsel. We have no evidence to put on.

The Court: Mr. Meyes, do you have any witnesses you desire to call?

Defendant Meyes: Your Honor, we cannot put on any defense without a lawyer, without counsel. We have asked you to provide us under the law a lawyer to defend us, read these transcripts and to let the Court know what is in those transcripts. Mr. Atkinson stated he did not have the

time to read those transcripts. He cannot properly try this case. We have been denied our constitutional rights. [fol. 219] We have been denied to put on our defense. We have no defense because we do not have a lawyer. We do not have legal representation. Since the amendment clearly states that every man is entitled to legal representation according to law, we have been denied that right. We have been denied all of our constitutional and all of our civil rights under the law, and I ask your Honor to stop this farce, grant us the time to get an attorney to read these transcripts and present to the Court the things that are necessary to show our innocence.

The Court: Very well. Do you have anything more to present?

Defendant Meyes: We aren't ready, your Honor.

The Court: Very well.

Well, the defendants not having presented any evidence, they resisting presenting any evidence, I assume then that the defendants rest.

Defendant Douglas: We have no legal counsel, your Honor, to speak for us. We are not -- we cannot defend ourselves. It's illegal, this procedure, to carry on like this. I want to obtain counsel by choice, a man that will help us and will go through these and bring out the things that have to be brought out. Mr. Atkinson stated he could not do that. He said he didn't have time to analyze these transcripts, to give us a good defense.

The Court: All right.

[fol. 220] Defendant Meyes: If your Honor -- one more thing, I would like for this to go into the record again, your Honor. I asked the Court to reconsider giving us lawyers to represent ourselves; and I also asked the Court to give us sufficient time to get an attorney who will properly prepare this case for trial, who will be able to read all these many, many transcripts.

Now, the Court appointed an attorney, your Honor, as your Honor well knows. Mr. Atkinson stated himself that he did not have the time to look through all these transcripts and pick out the things that are necessary for our defense. You have denied us the right to have counsel.

The Court: Mr. Atkins said he hadn't made a cross-reference index of the testimony, but he had read them.

Defendant Meyes: Your Honor, I beg your pardon, but Mr. Atkinson told you at the bench as well as myself that he did not read these transcripts because there were too many. There are 29 volumes of transcripts to read, that he had not read all of these transcripts. Therefore, he was not able to take this case to trial. This is a complicated case. Many, many facets of this case, your Honor, that deserve close attention. Mr. Atkinson did not have the time to read through these transcripts, nor to properly represent us. He told the Court he was not properly prepared to represent us. Yet, your Honor, since Mr. Atkinson [fol. 221] was not properly prepared to represent us, well, he was no counsel to us. We asked the Court to grant us this time to get an attorney whereby we can prepare this case for trial. Your Honor has refused us legal representation. I ask again, your Honor, to stop this thing here, give us this time whereby we can prepare ourselves to go to trial.

The Court: Very well. The situation has not changed any. Since the defendants do not put on any evidence, then the case is closed as far as the evidence is concerned. Since the defendants did not offer any evidence, then the People cannot offer any rebuttal evidence because there is nothing to rebut. This will be the time for argument, and each side is entitled to argue, and they may draw any reasonable inference from the facts that are presented here from the witness stand. If any statement is made, any statement of fact is made, you must disregard any such statement unless it is supported by evidence that is produced under oath on the witness stand.

Yes, Mr. Meyes.

Defendant Meyes: Once again, your Honor, I beg the Court to consider this. How can we possibly offer an argument or possibly offer a defense for something that we have no knowledge of? Your Honor is well aware that we do not know anything about the law. We don't even know the various—

The Court: As a matter of fact, I am aware of the con- [fol. 222] trary, Mr. Meyes, but I have hesitated to say that previously because you have had considerable experience, but that is neither here nor there. I think that even an able attorney that would be charged with an

offense should have some other attorney represent him. That is my own feeling.

Defendant Meyes: Your Honor, what defense have we offered, what opportunity have we been given to give our side?

The Court: You have been given all the opportunity. We urged you not to discharge your counsel yesterday, and I told you what the consequences might be, and you, knowing that, you deliberately determined to discharge your counsel.

Defendant Meyes: Mr. Atkinson, if Mr. Atkinson was not properly prepared to go to trial, would he be counsel for us?

The Court: Well, that matter has been determined, and now is the time for argument, and you will be given an opportunity to argue the case; but you will be confined to the facts as produced here from the witness stand. All right, Mr. Carr.

Mr. Carr: If your Honor please, in conjunction with all of this speech making and grand-standing of both of these defendants, I have sat here patiently, listening to them make these representations of being deprived of their rights; not only has the accusation been made against the [fol. 223] Court but it has been made against me. They have a stack of transcripts here. I am acquainted with that stack of transcripts, if your Honor please, because I have a similar stack of them. I will say that in those transcripts, of all those that they have there, there are only seven volumes that have anything to do with this particular case and only a portion of those seven volumes. There are at least that many volumes that are dogeared there. They continue to make these speeches, if your Honor please, that they are urging something upon you. They are making these speeches for just a purpose of speech making. I am prepared to go ahead with the argument. They have accused witnesses here of being bookmakers and gamblers. There is not an iota of testimony on their part of that.

Defendant Douglas: In answer to the Court; I asked permission of the Court to obtain a private attorney. I have been denied that. These witnesses have testified

against us, have prejudiced themselves in doing so. We are not attorneys. We can't defend ourselves.

The Court: Well, that matter—

Defendant Douglas: We have been denied the chance to obtain an attorney of our own choice.

The Court: You deliberately made the choice yesterday that you would discharge your counsel and would proceed alone.

Defendant Douglas: You imposed upon us counsel that [fol. 224] was not prepared to try our case.

The Court: I had nothing to do with it. It so happened that Mr. Atkins was very well prepared whether you say so or not. He was well prepared, and the only thing he stated was that he had not made a cross reference index of the testimony of the witnesses. Now, that is all—the only matter that he was not fully prepared on.

Defendant Douglas: I am a defendant in this case, one of the defendants, and to me the counsel, what counsel has to say to me is very important to me because I am on trial here. He gave me no indication whatsoever, from the indication that he gave me that he was not prepared. He said that he had not read these transcripts. He thought he was prepared. He didn't say that he was. He thought he was prepared.

The Court: All right. This is the time for argument. The matter will proceed. Proceed, Mr. Carr.

Mr. Carr: May it please the Court, ladies and gentlemen of the jury, the defendants.

ARGUMENT OF MR. CARR

The Court: Before you proceed, I might state that the same rule, of course, would apply; that is, the District Attorney may open the argument; the defendants then may reply. They may argue and the District Attorney may then answer. The District Attorney in his final argument may not bring up any new matters in his argument but is confined to answer in the matters that have been discussed by [fol. 225] the defendants. Proceed.

Mr. Carr: Ladies and gentlemen, it is not my purpose nor my right to advise you concerning the law. I'm only permitted to summarize the facts that have developed here

from the sworn testimony of witnesses. I emphasize sworn testimony of witnesses as to wherein that evidence substantiates each and everyone of the 13 charges that have been brought against these defendants.

Now, insofar as it may assist you in your deliberations, give meaning and direction, it becomes necessary frequently in the course of the summation to mention the law, because without the law the facts have no meaning. Wherein I mention the law, ladies and gentlemen, I ask you, please, to keep in mind that ultimately the specific definition of the law and the precise definition thereof you will receive from the Judge.

Now, the principal charges against these defendants—that is, the greatest number of them—are robbery. Now, keep in mind, please, this is not a legal definition of robbery, but on the one hand we can consider it for the purposes of this summation to be thus: It is stealing through the use of force or fear. That is, you steal somebody's property because you have used force against him. Evidence here indicates, I think, two people were pistolwhipped. That is force inflicted upon them, or because of people being placed in fear because a gun was pointed at them, the use [fol. 226] of a gun.

Now, as to the first count, Count 1 pertains to a Miss Fanny Tubbs who stated that on or about the 10th of October she and some others were at a crap game, dice game, at what she called a recess. I presume a break in the proceedings. Three men came in, two of whom were these two defendants, armed with guns; and as a result of being placed in fear of the guns, \$22 was taken from her in a little purse and then before they left the difference between the twenty-two and one hundred twenty some odd dollars was taken from her brassiere where she had it. That is a robbery of the amount of about \$120.

Incidentally, ladies and gentlemen, property, when taken through force or fear, is robbery. I mentioned that because some of these witnesses were not precise as to the amount they lost. Some of them spoke of being about so much; some of them spoke of it as being between a certain amount and another certain amount. The amount makes no difference as long as it is property that has some value.

Now, Fanny Tubbs identified the defendant Meyers; the

defendant Douglas and one Jackson as being there at the time.

Count 2. Now, I will say this, ladies and gentlemen, it is not necessary for you to take notes insofar as I indicate the various counts and who the alleged victims are because accompanying you to the jury room will not only be the [fol. 227] instructions of law but there will be a resume of the count number as we call it, charge number, whether it be one or any other, the alleged date it was on or about such and such a date, the alleged victim, whoever it was, Fanny Tubbs or the other, and the amount of money that is set forth in there so that you will have that all up in the jury room in the course of your deliberation.

Count 2 was robbery of Mathe Smith. That is the elderly gentleman that was here and stated that he was pistolwhipped by the defendant Douglas. Mathe Smith identified only the defendant Douglas, but we must keep in mind that Fanny Tubbs also placed the defendant Meyes there at the time. Mathe Smith said that after he was pistolwhipped by the defendant Douglas there was about \$80 that was taken from him as I recall.

Then in Count 3, at the same time, date, M. C. Smith, his son, was unable to identify any of the robbers and stated that there was approximately, I believe, \$140 that was taken from him.

Now, before I go on, doubling back to Mathe Smith, in Count 12 you will find—or, the 12th charge here—the defendants are charged with the offense with assault with a deadly weapon upon Mathe Smith. Now, the Court will advise you legally what an assault with a deadly weapon is, and you will find that the pistolwhipping that Mathe [fol. 228] Smith got from the defendant Douglas fits within that definition of assault with a deadly weapon.

Now, we came to M. C. Smith. As I stated, he was unable to identify any of these robbers, but we have identification for Mathe Smith as to the defendant Douglas being there and Fanny Tubbs of the defendant Meyes and Douglas and one other name she learned to be Jackson.

Now, the next one is Count 4. That alleges a robbery on the 24th of September of this lady J. M. Mac Booker, who stated that she was robbed twice, once on the 24th of

September and in Count 13 it appears on or about the 29th of June. Now, these dates are alleged as on or about. The Court will advise you that it is not necessary that you find that it occurred precisely on that exact date. She testified that on the 24th of September she lost about \$140. I think she fixed it at it, and she identified the defendant Meyes and the defendant Douglas as both participating in that robbery, and she had previously seen them in connection with a robbery which occurred on the 29th of June wherein she lost something in excess of \$100.

Count 5 is a robbery of Frank Stevenson that occurred on the 16th of August. Mr. Stevenson testified that in connection with that robbery he lost about \$120, and he identifies both the defendant Meyes and Douglas as participating, and you will recall he further testified to one other individual standing in the doorway.

[fol. 229] Count 6 is a robbery of Henry Carroll on the 25th of July, and he is the gentleman that was shot in connection with the robbery indicated here where he was shot in the chest about the center and it came out on his left arm. He identified the defendant Meyes and Mathews indicated that Douglas was similar but he wasn't positive that Douglas was there. He was not positive of Douglas' identification.

Count 7 involves the shooting of Mr. Carroll and it is charged as an assault with intent to commit murder. The Court will define that offense for you. Anyone who commits an assault on another with the intent to kill such other person is guilty of the offense of assault with intent to commit murder, and shooting a person in the chest falls within that category of the definition as the Court will give it to you.

In view of the fact that more than one person was participating in each of these robberies, and there was an assault with a deadly weapon and an assault with intent to commit murder, any transaction of that kind where one of the several robbers or participants in the crime commit the crime all others are equally guilty. Thus, if in the situation where Douglas pistolwhipped Mathie Smith the defendant Meyes could be equally guilty because where one performs a physical act in conjunction with the commission of the crime all the other defendants are equally guilty.

[fol. 230] Such as where a robbery is committed by several persons, several robbers, and only one has a gun, it is the same as though every man participating in that robbery had a gun in his hand.

While we are on the subject of robbery, the Court will indicate to you that it is the law of this state that where a person commits a robbery and is armed with a deadly or dangerous weapon, it is robbery of the first degree, and it is robbery of the first degree insofar as all are concerned. Taking a hypothetical situation, even though one of the many robbers has a gun, it is still robbery of the first degree even insofar as those who do not have a gun are concerned.

Now, we go to Aaron Hatch. That's count 8. Aaron Hatch was at the place and time where Henry Carroll was robbed and shot and Aaron Hatch was likewise robbed. Aaron Hatch, I believe, indicated the defendant Meyes as the only one that he could identify and that Aaron Hatch testified to losing his wallet and the identification and about \$5 in money but what is of equal, if not greater importance, is the chauffeur's license which he lost.

I hold a chauffeur's license in my hand, ladies and gentlemen, of the State of California, to Aaron Alfred Hatch, issued to him in June, the date of issuance, I do not know when it was supposed to expire; June 8, 1959. This was his chauffeur's license that was in his wallet at the time [fol. 231] that it was taken, and Sergeant Bitterolf, the last witness that testified here, testified that in searching the room of the defendant Douglas on the 20th of October, 1958, among the effects and cards of the defendant Douglas was found this chauffeur's card of the victim Aaron Hatch.

Now, Count 9 involves Moses Forrest. Moses Forrest was the man that owned the record shop on Central Avenue and he testified that on or about the 21st of July, 1958, he lost about \$115. As to his identification he could not identify Douglas at all. He merely stated that Meyes was similar in appearance, but as corroborative of his testimony we have the testimony of Louise Adams who was there. She lost no property in connection with the robbery but she did positively identify the defendant Meyes, the defendant Douglas and one other that participated in that

robbery, one Jackson, and she did testify in the Jackson trial.

Then, in connection with that same robbery on that date, there was a man there by the name of James Dundap, and they testified—that is, Louise Adams and Moses Forrest testified that Dundap along with the rest—Dundap is set up in Count 10—Dundap along with the rest was relieved of his property and that, in addition thereto, Count 11 charges the offense of assault with a deadly weapon insofar [fol. 232] as Dundap is concerned. You recall that both Louise Adams and Moses Forrest stated that something in the proceedings while being robbed Dundap asked for his identification and one of the robbers there hit him alongside the head with the pistol. In other words, pistolwhipped him and stated, "That is your identification." Later when the robbers left and they looked at Dundap he was bleeding from this injury.

Now, I have discussed the 13 counts against these defendants. Now, insofar as the evidence is concerned, there have been numerous remarks made in here by the defendants insofar as they claim a deprivation of constitutional and statutory rights is concerned. The Court has adequately answered that to them, and the Court has indicated that there has been no such deprivation. Anything that they have done they brought on themselves. They have made comment in here about these various people that have testified being perjurers, being gamblers, being bookmakers; not an iota of evidence that these people have perjured themselves. Whether they are gamblers or bookmakers, there is no evidence on that either, ladies and gentlemen. Let us remember this: I did not pick out nor did you pick out the people that the defendants sought to rob. If the defendant went out to rob gamblers and bookmakers, who did they expect to come and testify against them, doctors, lawyers and ministers or the gamblers and bookmakers that they robbed?

[fol. 233] Now, another thing, as the Court explained to the defendants, it is their choice as to whether or not they wish to take the witness stand and testify. The fact that they have not taken the witness stand and testified the Court will advise you you cannot—and I repeat—you cannot consider as an indication of guilt, that fact alone.

You cannot say the defendants are guilty. However, ladies and gentlemen, the Court will advise you that it is the law of this State that where it is within the knowledge and ability of a defendant to either deny or explain the incriminating evidence against him and he fails to do so, the jury has a right to infer that that evidence which he can deny or explain, that there is an inference that there is truth in it. Otherwise, he would deny or explain it. The defendants have failed to take the witness stand. It is their right. They do not have to, but you can draw reasonable conclusions. It is within their knowledge. They know whether they robbed these people. They know whether they shot these people. They know whether they pistol-whipped them. They have not given you the advantage of that knowledge.

Now, last, there was introduced here through the last witness, Sergeant Bitterolf, that on the 29th of October, 1958, he and a brother officer went to some particular place to arrest these defendants in connection with these robberies, and that he had a conversation with the defendant [fol. 234] Douglas wherein the defendant admitted robberies, not these particular ones, but admitted robberies, and that the brother officer was shot and subsequently died from his wounds. That evidence was introduced, if you please, to show a consciousness of guilt on the part of the defendants. The officer comes to arrest them for a crime; they shoot the officer. It can only be considered by you for that specific and particular purpose.

Now, insofar as the defendant Moyes is concerned, in addition to the charges against him, he has been charged with the fact that he has suffered three prior convictions of felonies. The defendant Moyes has denied them. Therefore, the People of the State of California by law having charged him with it, we have the burden of proving it; that that is a fact. These three prior convictions of felonies are in January 23, 1948, that Moyes suffered a conviction for burglary. This document which is Exhibit 3, there are some three pages of letters of transmittal, certification on the top. I am turning those. You can read them. I'm not hiding them from you. The next is a fingerprint card which is part and parcel of the certified copies and which is used to identify the individual. The fingerprint expert testified

that he took the prints of the defendant Meyes. That these prints which he, the officer, took matched the prints of the individual that appears here and, hence, they are one and the same person, the defendant Meyes.

Then, we come to the next document which is a judgment of the Superior Court of this State and County indicating a conviction of the offense of burglary and, insofar as Meyes is concerned, on the 12th of January, 1948. The Honorable William R. McKay, of revered memory was the Judge then presiding.

Then, the second offense or prior charged against the defendant Meyes is the next document that follows, and it indicates that the defendant was convicted of the crime of robbery of the first degree, same kind of a robbery with which he is charged here, and that occurred on the 30th of November, 1950, and the Honorable Clement Nye was the Judge presiding. That was likewise in this County.

Then, the next document indicates the third and last prior which is charged against the defendant, a judgment of robbery in the first degree of the defendant, pardoned just a moment. I'm going to have to back up on that page. There were two robberies. We only alleged one robbery in the first degree, but there were two robberies at which the defendant was convicted on November of 1950, and we come to the last one that is alleged here, one on the 12th of January, 1951, before the same Judge, Clement Nye, and indicating that there were two robberies on that date, and those are 112-230. I have referred back for the sole and exclusive purpose of taking allegations of prior convictions which will be relied upon to make a determination.

Ladies and gentlemen, you have heard the evidence here. I think the evidence in toto has taken possibly about a half day yesterday, and altogether about a half a day today, a little over a half a day today. We submit under the evidence that the defendants have been proven guilty and one of them of robbery in the first degree in every instance where robbery is charged in this information, an assault with intent to commit murder insofar as Mr. Carroll is concerned, and the two instances of the assault with deadly weapons, one on Mr. Dunlap and one on Mathe Smith, wherein they were pistolwhipped.

Frankly, the evidence brings no other conclusion. Your review the evidence in the light of the law as you will receive it from the Court, as I have done in this case as it has progressed, and as I have conducted this summary, ladies and gentlemen, and I respectfully ask that you find the defendants and each of them guilty as charged.

Thank you.

COLLOQUY BETWEEN COURT AND DEFENDANT

The Court: All right. Mr. Douglas.

Defendant Douglas: I'm not ready for trial, your honor. I don't have private counsel.

The Court: Without waiving any rights, whether or not you are ready, I would invite you to make such argument [fol. 237] or comment that you desire to make.

Defendant Douglas: I have nothing to say.

The Court: Very well. Mr. Meves.

Defendant Meves: If it please the Court, if I have said anything in the courtroom whereby my behavior has been somewhat unusual, that has been because I know for certain that my rights have been taken advantage of. I have asked the Court repeatedly to respect my constitutional rights guaranteed me under the constitution which was my civil rights and the Court has taken upon itself to deny me the privilege of having counsel to present to the Court the evidence which would exonerate me from these things, that the District Attorney and these fake gamblers and robbers and these bookmakers have brought against me.

Now, at no time have we been given the benefit of having a lawyer to bring these things to the attention of the Court. This has been a half a trial. It hasn't been a complete trial. We haven't had the opportunity because of our lack of counsel to present to the Court the things that are necessary whereby a fair decision could be reached by the Court. Once again I ask the Court to stop this illegal proceeding and let us obtain counsel to defend us. At no time have we had that right to defend ourselves.

The Court: Well, I am going to have to reply again because that is not a correct statement. You had adequate [fol. 238] counsel who was well prepared and the only way he was not prepared, as he stated, was he had not cross-

indexed the transcripts and, although the transcripts appear to be about a foot and a half high, actually there are only a few transcripts involved in this proceeding.

Incidentally, the transcripts show that they are very well marked with notations sticking out of the end of the transcripts. Now, the Court has already ruled on that, and I urged you not to discharge your attorney yesterday.

Defendant Meyes: If it please the Court,—

The Court: No. Now is the time to argue the facts of this case to the jury, and it will be up to the jury to determine the matter from the evidence that is produced here from the witness stand, and I now invite you to turn your attention to those matters.

Defendant Meyes: If it pleases the Court, these are things, these pieces of paper were left by the other attorney, Mr. Breckenridge, period. All of these pieces of paper. These yellow pieces of paper were put there by him. Mr. Atkinson, who was assigned this case, did not have the time to go through these transcripts and see what was in those transcripts.

The Court: Mr. Meyes, we are not going to go through that again.

Defendant Meyes: We have not had counsel. I demand [fol. 239] my constitutional rights. I demand that the Court give me the opportunity to have a counsel to defend myself.

The Court: All right. This case was filed in August arraignment was sometime—the clerk has the file—but the arraignment was about the middle of August. The case was set for trial. The arraignment was August 21st. Set for trial August, or September 30th. Counsel was appointed and counsel was prepared except for the making of a cross index as I have stated. Now, the Court has already ruled on that. You have had good counsel and you fired counsel against the advice of the Court.

Now is the time to argue the facts of the case, and now you have an opportunity to argue the matter to the jury concerning the facts that have been produced from the witness stand.

Defendant Meyes: If it pleases the Court, again I would like to apologize for my ignorance concerning the law, and

once again I ask your Honor, I beg your Honor to reconsider California Penal Code 987a whereby an accused is entitled to have counsel.

The Court: Well, now, I have considered that at least a dozen times. Now, this is the time to argue the facts to the jury if you care to argue them.

Defendant Meyes: Your Honor, I am not ready. This is a half a trial. We haven't had benefit of a lawyer to advise us concerning the illegal activities of the prosecution [fol. 240] throughout this entire trial.

Mr. Carr: The what?

Defendant Meyes: Seems pretty obvious—

Mr. Carr: Just a minute. Pardon me just a minute.

The Court: You may have it read back.

(Reporter read record.)

Mr. Carr: I would like to state this: The reason that Mr. Meyes is reiterating this, there has been no illegal activity on the part of the prosecution, if your Honor please, and he cannot point to any. He is just talking. I think that if he is going to continue to make a talk, at least he ought to confine himself to the facts. He has repeatedly invited your attention to this particular code section which has no application in this instance. Your Honor pointed out to him that he had a lawyer, an able counsel, and counsel indicated he was ready to proceed, and for reasons known only to the two defendants they desired and they did indicate and were successful in getting that lawyer discharged from the case, a member of the Public Defender's office.

Now, let's get down to the truth. There have been a lot of accusations made here, talk about falsehoods. They have stated that those paper slips were put in by another lawyer, not Mr. Atkins. They did not say those were put in by another lawyer who is likewise a member of the Public Defender's office. They continue to make false accusations [fol. 241] tions. He has never pointed out—and I state that he cannot find any place where the prosecution has acted illegally or unethically or in a conspiracy with any one anytime or anywhere to persecute not prosecute these individuals.

Defendant Meyes: Your Honor, I have asked the Federal

Bureau of Investigation, I talked with them and they have assured me that they are investigating this matter, false and fake robberies.

The Court: Now, Mr. Meyes—

Defendant Meyes: Haven't had time to complete their investigation.

The Court: Now, I have invited you to make such argument—

Defendant Douglas: Your Honor—

The Court: Just a minute, Mr. Douglas. Mr. Meyes, I have invited you to make your argument on the facts of this case to the jury and, if you do not care to do so, that is up to you.

Defendant Meyes: Once again, your Honor, would you delay this proceeding until we can get the report back from the Federal Bureau of Investigation concerning those allegations that have been made to them. I have appealed to them for relief from these—

The Court: You asked repeatedly for delays for various reasons, one after the other. Now is the time to argue on [fol. 242] the facts of this case and the argument is directed to the jury and not to the Court.

Defendant Meyes: Your Honor, I am not represented by counsel. I have been denied the right to counsel, and I am not ready for trial.

The Court: All right.

Defendant Douglas: In reference to Mr. Carr's statement I have made no statements concerning those transcripts, but these witnesses that have testified against us have testified falsely and there is collaboration between them and the police department. We have been harassed falsely. We have not been given a chance to obtain counsel of our own choice and counsel who has our case and interest at heart to give us the benefit of this proceeding. We have been denied those rights, and I think it is unjust for this proceeding to proceed any further.

The Court: All right. The defendants having declined to argue the matter the matter will be submitted, and the jury will be instructed tomorrow morning concerning the matter. Tomorrow is what we call probation and sentence day. I'm wondering about instructing the jury at 9:40 o'clock before probation and sentence rather than at the

conclusion of probation and sentence. Do you have any thoughts on that matter, Mr. Carr?

Mr. Carr: As a convenience to the members of the panel, I would suggest 9:00 o'clock, your Honor, because the [fol. 243] time in which you generally finish your probation and sentence calendar varies. You cannot estimate it. It might be as early as 10:30 and it might be as late as 11:30.

The Court: Yes, that is right. All right, Mr. Meyes, I see you are on your feet again.

Defendant Meyes: Once again I would like to call your attention to the fact that I have written to the State Bar concerning things pertaining to Mr. Joseph Carr here throughout other proceedings and how Mr. Joe Carr has purposely conspired or entered into a conspiracy with the police officers. Mr. Carr has handled this murder case as well as this case here, and I need time, your Honor, in order to get an attorney to back up these things that I am saying. We do not have the time. We need time for an attorney who will be able to read these transcripts and to bring out the falseness of these robberies. We have not had the opportunity to call witnesses in our behalf.

The Court: All right.

Defendant Meyes: —to prove these robberies are false, to prove these robberies are nothing but a figment of the imagination of the police department; denied us a right to have counsel. Constitution states that we are entitled to counsel, legal representation. In no way have we defended ourselves, your Honor. We cannot defend ourselves. We are not attorneys. We are not lawyers.

The Court: Mr. Meyes, you have had a long time to be [fol. 244] prepared for trial. The facts of some of the robberies were brought to your attention much earlier than the day, the date of the filing of the Information or the date of the arraignment in this case.

Defendant Meyes: Well, your Honor, could you give us a decision in a case whereby you heard only just half of the case?

The Court: Unfortunately, sometimes the decision has to be made when all the evidence is in, knowing that one side or the other has not put in all of the evidence that is available.

Defendant Douglas: Mr. Atkinson even himself didn't

make no effort to obtain our witnesses whatsoever. That is a confidence between us and the public defender's office.

The Court: Now, we have—ladies and gentlemen of the jury, you are admonished it is your duty not to converse among yourselves or with anyone else on any subject connected with the trial or to form or express any opinion thereon until the cause is finally submitted to you. We will take the afternoon recess. We will reconvene tomorrow morning at 9:00 o'clock. It is a busy day, and, if you are here at 9:00 o'clock, I will give you your instructions the first thing in the morning and then you can be working upstairs while we are working down here.

(The jury retired for the day.)

(The following proceedings took place out of the presence [fol. 245] and hearing of the jury.)

Mr. Carr: At this time, if your Honor please, I would like the record to show that towards the conclusion of summation to the jury the reporter from one of the local newspapers, the Los Angeles Tribune, a weekly paper came into the court room and this renewed speech making effort and claims of deprivation of constitutional privileges were then gone into with renewed vigor by Douglas and Meyes, because it appears that at least several weeks ago the paper had an article in it insofar as Mr. Douglas and Mr. Meyes were concerned, they apparently called for the reporter and gave their version of what had gone on not only in this trial but in other trials, and I just want the record to show that because as I have always contended, the reasonable inference of the statements made by Meyes and Douglas here are not because they are directing your Honor's attention to points of law; there have been repeated reiterations of all these facts all the time. They are not concerned at all with the Court. They are only grandstanding and making statements for purposes of the edification of other persons, and I say this last time for the purpose of the reporter from this newspaper.

The Court: Well, I noticed several times while you were making an argument to the jury, Mr. Carr, that Mr. Meyes had written something on the tablet that was furnished to him and was showing the tablet to the reporter. Of [fol. 246] course, I have no idea what was on there and I

do not know whether her eyesight is good enough to read it or not.

A Voice: It was not.

Mr. Carr: The woman, your Honor, I was referring to, is a reporter. I have talked to her about the case. Ethics restrain me from commenting about this case and the other which is on appeal. Apparently it did not bother the defendants at all. As to those matters which I could ethically discuss with her, I have no objection to that.

The Court: All right.

(Whereupon at 3:42 o'clock p.m. an adjournment was taken until 9:00 o'clock a.m. of the following day.)

[fol. 247] Los Angeles, California, Friday, October 2, 1959, 9:00 A.M.

The Court: People versus Douglas and Meyers. Let the record show all of the jurors present, the defendants and counsel.

(Whereupon the Judge instructed the jury after which the jury retired for deliberation at 9:22 a.m. and returned at 11:21 a.m.)

The Court: Let the record show all the jurors are present, the defendants and counsel.

Ladies and gentlemen of the jury, have you arrived at verdicts in this case?

Juror No. 6: We have.

The Court: Will you hand the verdicts to the bailiff, please?

(All verdicts were read, the jury was polled and all jurors were subsequently excused.)

The Court: Probation and sentence in this matter will be set for 9:00 a.m. on October 23, 1959, and the probation officer will be ordered to come up to get the necessary forms, if possible, on probation and sentence.

Defendant Douglas: What was that date?

The Court: October 23rd, this department, 9:00 a.m.

Mr. Carr: Your Honor, a probation officer was ordered to go to the County Jail and get the necessary information.
[fol. 248] tion?

The Court: The probation officer is ordered to go to the County Jail to get the necessary information. The defendants will be remanded.

The Court adjourned at 12:08 p.m.)

[fol. 249] PROCEEDINGS ON PROBATION AND SENTENCE

Los Angeles, California, Friday, October 23, 1959

9:00 O'clock A.M.

The Court: People against William Douglas. You are William Douglas?

Defendant Douglas: Yes.

The Court: All right. This is the time for probation and sentence on Case Number 218496, and also a violation of probation in Case Number 180112. Let the record show that I have read the report of the probation officer.

Is there anything that you desire to add, Mr. Douglas?

Defendant Douglas: I have nothing to add to the probation report. I would like to have your Honor to appoint me a Public Defender in making a motion for a new trial.

The Court: Well, Mr. Douglas, the Public Defender was appointed for you, and he was prepared for trial in this case. After the trial commenced, you discharged him.

Defendant Douglas: Well, he also indicated to the Court that he wasn't properly prepared to defend me, and that is the reason that I dismissed counsel.

The Court: No, actually the only matter in which he wasn't fully prepared was that he had not made a cross index of the various transcripts of the previous hearings. [fol. 250] Frankly, I don't suppose there is more than several attorneys in a hundred that would even be bothered in making such a cross index of the transcripts.

Defendant Douglas: It is vital to my defense that he do so. He stated that he didn't have a chance, and I was denied a chance for a continuance, so for those reasons, those were the reasons that I dismissed counsel.

The Court: Well, I think you dismissed counsel knowing full well the consequences of the dismissal of counsel. You had had some court experience before. That doesn't mean

that you were necessarily qualified to act as a lawyer, but at least you knew or should have appreciated some of the problems that would be involved.

Defendant Douglas: As I said before, counsel wasn't prepared. I didn't think it was proper to have counsel forced upon you that wasn't prepared to properly defend my case.

That is the reason I dismissed counsel.

The Court: No, I think that having made the determination with full knowledge of the consequences to dismiss counsel, I think it would not be proper for the court at this time to appoint counsel for you. I therefore *decline to do so*. However, if you do have a motion for a new trial, or any other proceedings, you are certainly welcome to proceed.

[fol. 251] Defendant Douglas: All right.

The Probation Officer: May the record show that the defendant received a copy of the probation report, that he had an opportunity to peruse it, and that at this time he delivered it back to the probation officer.

The Court: Very well.

MOTION FOR NEW TRIAL AND DENIAL THEREOF (DOUGLAS)

Defendant Douglas: At this time I make a motion for a new trial under Section 1155 of the Penal Code, and all of the statutory provisions covering appeals.

At this time I submit a copy to the Court of this motion for a new trial.

The Court: All right, hand it to the Clerk. Did you say Section 1155 of the Penal Code?

Defendant Douglas: That is right.

The Court: That relates to a judgment for a special verdict. It doesn't seem to be applicable. All right; let me read that Section. All right, this motion for a new trial, which is almost in the same words as you have stated, will be filed. Do you have any further argument or statement on the motion for a new trial?

Defendant Douglas: That is all, your Honor.

The Court: Well, the motion for a new trial is denied. Is there any legal cause why judgment should not be pronounced?

Defendant Douglas: There is, in my mind. As I say,

we weren't prepared for this trial, didn't have proper [fol. 252] counsel to defend us., I think that this verdict should be set aside.

The Court: All right, is there any particular item or detail that you care to discuss in that regard?

Defendant Douglas: Well, the witnesses, there was collaboration between the witnesses and the Police Department against us, that we didn't have proper counsel in order to prepare our case to defend ourselves. I think that we should be given that chance, to properly prepare our case, be given an equal chance under the laws of the *State of California as a citizen of the United States*.

The Court: Well, you had a long time to prepare some of the case, because I recall in the first murder trial in which you were later acquitted, several of the counts were charged, and it is my recollection that you produced at least as to one or two of the robbery counts your sister who appeared as an alibi witness. I didn't check back on my notes, but that trial was early this year, in the Spring of the year. So at least on some of those counts you probably were as well prepared in September as you were earlier in the year.

Defendant Douglas: I was prepared myself, your Honor, but the counsel was not prepared. With proper counsel, I would have gladly been ready for trial. I myself was prepared. He was not prepared.

[fol. 253]

SENTENCE (DOUGLAS)

The Court: All right. Is there any legal reason why judgment should not be pronounced?

Defendant Douglas: No.

The Court: All right, do you waive arraignment for judgment?

Defendant Douglas: No, I do not.

The Court: Very well, William Douglas, is that your true name?

Defendant Douglas: That's right.

The Court: All right, you have heretofore been arraigned under Information Number 218196. You have been charged with 11 counts of robbery, armed robbery. You have been charged with one count of assault with intent to commit

murder in violation of Section 217 of the Penal Code and two counts of assault with a deadly weapon, violation of Section 245 of the Penal Code, and to each of these charges you entered a plea of not guilty. The matter was regularly set for trial in this Department on September the 30th, 1959. The matter was tried before a jury which returned a verdict of guilty on all counts and found it is my recollection that the degree was first degree robbery on each of the robbery counts.

Yes, that is correct.

The jury found the degree to be robbery in the first degree on all of the ten robbery counts. Let the record show the Court has read and considered the report of the [fol. 254] probation officer.

The motion for a new trial has been made and denied.

Probation is denied and the defendant is sentenced to the State Prison for the term prescribed by law, as to each individual count, and as to count number 1, that is a robbery count, you are sentenced for the term prescribed by law to the State Prison, and that is true as to all of the other counts. Counts 2, 3, and 12 are to be concurrent with Count Number 1.

On Count number 4, it is to be consecutive to Count number 1.

Count number 5 is to be consecutive to Count number 4.

Count number 6 is to be consecutive to Count number 5. Counts number 7 and 8 are to be concurrent with Count Number 6.

Count number 9 is to be consecutive to Count number 6, 7 and 9.

Count number 10 and 11 are to be concurrent with Count number 9.

Count number 13 is to be consecutive to Count 9, 10 and 11.

You will be remanded to the custody of the Sheriff to be delivered to the Reception Center at Chino. Now with reference to case number 180112, that is a hearing [fol. 255] on violation of probation.

Mr. Carr: That matter was disposed of, I believe, by Judge Walker, your Honor.

The Court: Well, I don't know whether it was or not.

Mr. Carr: I checked the minutes in Judge Walker's De-

partment. I forgot what the date was on it. I think an examination of that file would also indicate a Minute Order to that effect, but I checked the original Minute Order, and I think that Judge Walker violated the probation or revoked it, rather, and pronounced a County Jail sentence on it.

The Court: Well, there has been previously a County Jail sentence in that case of one year, and it would have been my order to have made it concurrent with the other sentence.

Defendant Douglas: Your Honor, I would like to make a motion for a stay of execution until I can prepare proper papers for an appeal.

The Court: No, the motion for the stay will be denied. You can prepare the proper papers for an appeal regardless of where you are.

Defendant Douglas: Okay.

SENTENCE (MEYES)

The Court: Now, the case of Bennie Will Meyes. You are Bennie Will Meyes?

Defendant Meyes: Yes, I am.

The Court: This is the time for probation and sentence. [fol. 256] Let the record show I have read the report of the probation officer. Is there anything you desire to say, Mr. Meyes?

Defendant Meyes: Well, first of all, I would like to see if we could get a Public Defender appointed to us, to prepare the necessary motion prior to being sentenced. Could we have that?

The Court: Well, Mr. Douglas made such a motion, and the Public Defender had been appointed for you at the beginning of the case.

During the proceedings after the jury was empaneled, you discharged your attorney and seemed to know what you were doing in discharging him. You had had considerable Court experience before.

You may not have been particularly qualified as a lawyer to handle your own case; in fact, I question whether a member of the Bar himself is adequately prepared to handle his own case, but anyway, you had had enough experience

to realize the problems that you might have been an agent. You deliberately made the decision. You made that decision against the pleading of the Court that you not do so. I don't think it would be appropriate at this time then to ask the Public Defender or any other attorney to come in on the case under such circumstances. Having made the decision, I think that you are bound by it.

The motion will be denied.

[fol. 257] Defendant Meyes: Well, I would like to say this, your Honor. I have read the probation report that the probation officer has given me to read, and the records indicate that we were acting as our own counsel, and as your Honor well knows at no time have we acted as our own counsel. At no time during the course of the trial did we cross examine any witnesses nor did we question or challenge the behavior of the prosecution. Our only contention throughout the entire trial was that the Court would honor us with the right to have an attorney to defend us, and as Mr. Atkins told your Honor prior to this trial that he was not properly prepared to take this case, and he wanted a continuance.

The Court: Mr. Atkins stated the he wasn't as fully prepared as he hoped to be. Now, that is true, I think, with every lawyer in almost every law suit. It has been true in my experience with myself. I was never as prepared as I wanted to be. The only way in which he was not prepared was that he had not made a cross index of the testimony of the various witnesses who had testified in previous proceedings.

I might point out that I don't believe there is more than several attorneys out of a hundred that makes such a cross index of the testimony of witnesses. That is merely an indication of the type of attorney that Mr. Atkins is. He was so thorough that he wanted to have a cross index. [fol. 258] Now that is the only way he was unprepared, so to speak, if you call that being unprepared.

Defendant Meyes: Well, if your Honor will remember, Mr. Atkins did state to the Court at the bench that there were many, many things that he had not done in regard to this case and he needed time to do that. As your Honor well knows, Mr. Atkins also stated that this was a complicated case, and in his opinion he could not give us the best

service, but after he had provided to the District Attorney, he would handle the case.

The Court: Well, he couldn't give you the best of his service because you were pulling at his coat tail and interfering with him in the conduct of the case. That was pretty obvious to me, and he stated that at the bench in your presence.

Defendant Moyes: He also stated, your Honor, that he hadn't completed doing what he wanted to do in regard to this case. Therefore, he would not give us the best of his service. In view of that, it was our opinion that Mr. Atkins, under the circumstances, he could not give us the best of his service because he was not properly prepared to take this case to trial. I am not questioning Mr. Atkins' abilities as an attorney. We told you that we were not attorneys, that we were in no way able to defend ourselves against the capable Mr. Joe Carr. We insisted, we asked the Court Trial 2500 that we be given ample time to secure an attorney who would read the transcripts necessary to give us a fair trial, that we were in no way defending ourselves. We repeated that request throughout the entire trial. We did not cross examine and witness. We did not pick the members of the jury. Mr. Carr picked the members of the jury, and he tried this case like they did in the old West, back around in the 18th century. We were never given

The Court: I realize you're sorry, but my knowledge of those things is limited to television, and I seriously question the accuracy of it.

Defendant Moyes: If your Honor please, in your Honor's opinion, why we given a fair trial. Did we attorney and us our own counsel?

The Court: Well, you had the opportunity to cross examine. I invited you repeatedly to cross examine. I invited the various other proceedings, and you deliberately took the position that you were not going to go ahead with the trial. You fired your attorney right when the jury was being selected. We spent a good part of the day attempting to have you not discharge your attorney, and pointing out the consequences, knowing full well what the consequences could be, and you persisted and you fired your attorney. Then at each opportunity to question jurors or

prospective jurors or to cross-examine witnesses, you then [fol. 260] made a statement that you were not attorneys, and you were not prepared to go ahead. The Court tried very hard to protect your rights at all stages of the proceedings.

Defendant Meyes: Your Honor, if you will remember, if Mr. Atkins had been prepared—he was not prepared to his satisfaction, and that in itself should have indicated to the Court that he was not properly prepared to take this case to trial. Since he was not properly prepared to take this case to trial, then he was not counsel to us, but he indicated to the Court that he could be counsel as the trial would progress, and then this is a very serious thing. Thirteen counts of robbery, and I am certain there is enough evidence, just in this probation report alone that if this case was investigated by the District Attorney's Office, that he would file perjury against the testifying witnesses. There is enough evidence right in this probation report, and the testimony that these people have given, we have been denied equal protection under the law.

Mr. Carr has known throughout this entire thing that some of these people, when they got up and identified me, stating that they knew me in 1940, Mr. Carr knew that I was a boy in St. Louis, Missouri, 14 years old. Mrs. Fannie Tubbs also testified that the last time she saw me was five years ago. Mr. Carr knows I was in San Quentin Prison, yet these things have gone on.

[fol. 261] The Court: You had an opportunity to cross-examine. You declined that.

Defendant Meyes: We are not lawyers. How could we defend ourselves? Mr. Carr is a very capable attorney. Now, we know that in Nazi Germany during the war, Mr. Carr did the same things to us that Hitler did in Germany.

The Court: All right—

Defendant Meyes: Mr. Carr knew that.

The Court: All right, now, is there any reason why judgment should not be pronounced?

Defendant Meyes: Well, your Honor, I think that we should be given the time to answer these charges.

The Court: You have

Defendant, Meyes: We have had no opportunity to have counsel.

The Court: You have been given the time and you have declined to use the counsel you were provided with. Now, do you desire to make a motion for a new trial?

Defendant Meyers: Would the Court please explain. I am completely ignorant of the law, as you well know.

The Court: Well, that is a matter that is up to you. I don't think you are quite so ignorant because you have been through a great many Court proceedings, and you must have picked up some knowledge at some stage of the various proceedings. This is the time for judgment.

Defendant Meyers: Your Honor, if it please the Court, [Vol. 262] I would like to have a new trial, because I feel that my constitutional rights have been violated. I have not had an opportunity to defend myself in this courtroom. During the entire proceedings we sat here while Mr. Carr tried us. He tried the case. He empaneled the jury.

The Court: What particular grounds are your motions for a new trial made on?

Defendant Meyers: That we haven't had counsel. We haven't had a lawyer to defend us. We haven't had anybody to defend us against these allegations that these people made, just like I said, there is enough evidence right here in this probation report that would send these people who testified to prison for perjury. Mr. Carr well knows that, that these people have perjured themselves. I think that we are still human beings, American citizens, and we should be given the right to be heard. We should be given the right. It is Mr. Carr's duty to give us equal protection under the law as he did these other people that he brought in, these gamblers and bookmakers, that they got to testify against us.

The Court: Of course, gamblers and bookmakers are entitled to be protected against armed robbery just the same as any other citizen. Is there any other ground for a motion for a new trial?

Defendant Meyers: Well, your Honor, we have been denied our constitutional rights to be represented by counsel [Vol. 262] throughout this entire proceeding.

The Court: Do you have anything you want to say on the motion for a new trial, Mr. Carr?

Mr. Carr: No, your Honor, the matter is submitted.

The Court: All right, the motion for a new trial is denied.

Is there any legal cause why judgment should not be pronounced?

Defendant Meyes: Well, your Honor, would you give us more time, hoping that we can secure an attorney to file the necessary appeal papers, and these things that are necessary for something like this?

The Court: Well, no, I see no reason for a delay in judgment for that reason. You can still take the proceedings to an appeal if you feel that there are any grounds for an appeal. The delaying of the judgment will not make any difference in that regard. Do you waive arraignment for judgment?

Defendant Meyes: Pardon, your Honor?

The Court: Do you waive arraignment for judgment?

Defendant Meyes: Well, forgive me, I don't know what you are talking about.

The Court: All right. Very well, Bennie Will Meyes, is that your true name?

Defendant Meyes: That is, sir.

The Court: All right. You have been heretofore arraigned on Information Number 218196, charging you with ten counts of robbery, one count of assault with intent to [fol. 264] commit murder, violation of Section 217 of the Penal Code, and two counts of assault with a deadly weapon.

To each of these 13 counts you have entered a plea of not guilty.

You were also charged with three prior convictions of a felony, and you denied those priors.

The matter was set for trial in this Department on September the 30th, 1959, and was tried upon that day, and the following days by a jury who returned a verdict of guilty as to each of the 13 counts and found that the ten robbery counts was robbery in the first degree. The jury also returned a verdict finding that the three prior convictions as alleged in the Information were true.

Let the record show that the Court has read and considered the report of the probation officer. The motion for a new trial has been made and denied. Now, there appearing to be no legal cause why judgment should not be pronounced, probation is therefore denied and you are sentenced to the State Prison for the term prescribed by law on each of the 13 counts. You have previously been sen-

tenced to the State Prison for the crime of second degree murder, and I think you also have been sentenced, or you have a term as a parole violator still remaining. In any event, you have previously been found to be a habitual criminal under Section 644a of the Penal Code. This Court also finds that you are a habitual criminal under such Section [fol. 265] now, that is, 644a. The sentences in this case, in Count number 1 are to be consecutive to the previous sentences that you have suffered, that is, consecutive to the sentence for second degree murder, and also whatever term you may have left upon your parole violation. On Counts number 2 and 3 and 12 they are to be concurrent with Count number 1. Count 4 is to be consecutive to Counts 1, 2, 3 and 12. Count 5 is to be consecutive to Count Number 4. Count number 6 is to be consecutive to Count number 6. Count number 7 and 8 are to be concurrent with Count number 6. Count number 9 is to be consecutive to Count number 6, 7 and 8. Counts number 10 and 11 are to be concurrent with Count number 9, and Count number 13 is to be consecutive to Count 9, 10 and 11.

You will be remanded to the custody of the Sheriff to be delivered by the Sheriff to the Reception Center at Chino.

(Whereupon the above entitled matter was concluded.)

[fols. 266-270] Reporter's Certificates Omitted in Printing.

[fol. 271] IN THE DISTRICT COURT OF APPEAL OF THE STATE
OF CALIFORNIA, SECOND APPELLATE DISTRICT

Second District, Criminal No. 7040 Los Angeles County

218-196

Judge Bayard Rhone

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Re-
spondent

vs.

WILLIAM DOUGLAS, BENNIE WILL MEYES

Douglas—San Quentin SA 55779

Meyes—A 8164 Represa

DOCKET ENTRIES

- Jan. 6—1960 Filed Record on Appeal, Cl. R1 from
judgt & order.
- Jan. 6—1960 Filed request for counsel for Douglas.
- Jan. 8—1960 Request denied (Douglas).
- Jan. 22—1960 Request for counsel denied. (Meyes)
- Mar. 25—1960 Petition (mandate) for order re tran-
script denied.
- Apr. 12—1960 Application for counsel denied.
- May 17—1960 Filed Appellant's Opening Brief.
- Sep. 8—1960 Filed Respondent's Brief.
- Sep. 28—1960 Filed Appellant's Reply Brief.
- Oct. 20—1960 Apt notified pursuant to Rule 7a (Doug-
las)
- Nov. 9—1960 Filed ltr of apt Douglas refusing to adopt
brief of apt Meyes.

Ordered on Calendar Dec. 21, 1960

- Dec. 5—1960 Exhibits received from Superior Court.
- Dec. 21—1960 Argument waived; cause submitted.
- Dec. 29—1960 Judgmt modified, and J & Os affirmed.
Vallee, J.

We concur:

Shinn, P. J. Ford, J.

Jan. 13—1967 Filed Petition for Rehearing.
[fol. 271a] Jan. 26—1967 Petition for Rehearing Denied.
Petition for Hearing filed in Supreme Court.
Hearing denied by Supreme Court.
Feb. 28—1960 Remittitur Issued.
Oct. 16—1961 Filed certified copy of order of U.S.
Supreme Court granting certiorari.

[fol. 272] IN THE DISTRICT COURT OF APPEAL OF THE STATE
OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

Crim. No. 7040

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and
Respondent,

vs.

WILLIAM DOUGLAS AND BENNIE WILL MEYES, Defendants and
Appellants

OPINION—Filed December 29, 1960

Appeals from judgments of the Superior Court of Los Angeles County and from order denying motions for new trials. Bayard Rhone, Judge. Judgment as to defendant Meyes, modified and affirmed; judgment as to defendant Douglas, affirmed. Orders denying new trials, affirmed.

Bennie Will Meyes and William Douglas, in propria persona, for Appellants.

Stanley Mosk, Attorney General and Jack E. Goertzen, Deputy Attorney General, for Respondent.

On sufficient evidence a jury convicted defendant Douglas and Meyes of ten counts of robbery (counts 1, 6, 8, 10, 13), one count of assault with intent to commit murder [fol. 273] (count 7), and two counts of assault with a deadly weapon (counts 11, 12). The jury also found that defendant Meyes had been convicted of burglary in 1948, robbery in 1950 and in 1951, and had served terms of imprisonment

therefor. Defendants appeal from the judgments and from orders denying their motions for new trials.

Defendants contend it was essential they be indicted by a grand jury and that it was error to proceed by information. The point has no merit. Prosecution of criminal cases by information is an alternative remedy. Due process of law does not require an indictment by a grand jury as defendants assert. (*People v. Thwaites*, 101 Cal. App. 2d 674, 677.)

At the time defendants were arraigned on August 18, 1959, the public defender was appointed their counsel. When the cause was called for trial before Judge Rhone on September 30, 1959, defendants, represented by Deputy Public Defender Norman R. Atkins, filed an affidavit of prejudice and made an oral peremptory challenge under section 170.6 of the Code of Civil Procedure. The challenge was denied. Mr. Atkins made a motion for a continuance. The motion was denied. On behalf of defendant Douglas, he then requested the court to appoint separate counsel for Douglas. The request was denied. During impanelment of the jury, both defendants in open court dismissed Mr. Atkins as their counsel and requested the court for time in which to obtain private counsel. The request was denied. Defendants then determined to defend themselves without the assistance of counsel.

[fol. 274] It is asserted the court erred in denying a continuance. On August 21, 1959 the trial was set for September 30, 1959. It was on the latter date that the court denied a continuance. The assertion is based on the contention that Mr. Atkins was not prepared to go to trial. While Mr. Atkins stated he would like more time in which to prepare, he said: "On my own part I feel that I am prepared" and "I have prepared this case so that I could defend it now." Mr. Atkins also said, "as this trial progresses, I feel I would be able to do that [further prepare] as I go along, and it may not be to Mr. Meyes' satisfaction or Mr. Douglas' satisfaction, but I would be able to do that and do it properly."

"No continuance of a criminal trial shall be granted except upon affirmative proof in open court, upon reasonable notice, that the ends of justice require a continuance." (Pen. Code, § 1050.) The granting of a continuance nor-

inally rests in the discretion of the trial court. (*People v. Buckarski*, 37 Cal. 2d 629, 631-2. The action of the trial court will not be disturbed in the absence of a clear abuse of discretion. (*People v. Markos*, 146 Cal. App. 2d 82, 86.) No abuse of discretion appears.

Defendants contend it was error not to appoint other counsel for them at the time they dismissed Mr. Atkins on the day of trial. So far as the record shows, defendants had no ground for dismissing Mr. Atkins. The dismissal [fol. 275] was unqualified. "Defendant Meyes: I can't use him under any circumstances. I'm letting you know, Mr. Atkinson, I don't want you to represent me. Mr. Atkins: Well that seems unqualified enough, your Honor. Defendant Meyes: I don't want you to represent me. I stated that as clearly as I know how. I do not want you for my counsel. I don't want you under any circumstances. The Court: All right. You now state the same thing, do you, Mr. Douglas? Mr. Douglas: I do. The Court: Very well. Then, under those circumstances I will have to relieve Mr. Atkins. We will proceed with the trial."

A defendant's right to counsel does not include the right to postpone the trial of a case indefinitely and reject the services of the public defender while defendant, at his leisure, attempts to find counsel. (*People v. Adamson*, 34 Cal. 2d 329, 332-3.) As in *Adamson* (p. 333), "This court can take judicial notice, too, that it would be difficult to find in California any lawyers more experienced or better qualified in defending criminal cases than the Public Defender of Los Angeles County and his staff."

People v. Simcom, 132 Cal. App. 2d 593, says (p. 597):

"[W]hen the court assigned the public defender to represent appellant, the accused had at hand one of the best equipped law offices in the state to champion his cause. It has a corps of vigorous, learned, and able gentlemen who present their causes with force and intelligence. . . . Where a person accused of crime refuses to be represented by the Public Defender of Los Angeles County, and demands that some practicing lawyer leave his private practice in order to defend such accused, the latter prefers to have cause for a grouch rather than a chance to defeat his accusers. Because there are thousands of lawyers in

Los Angeles County who would gladly suffer much inconvenience rather than see the constitutional right of an accused violated, is no reason why a defendant should be privileged to dawdle with the trial court, to neglect for four weeks to obtain counsel, and then have his conviction reversed because he did not choose to be represented by the public defender."

And in *People v. Williams*, 174 Cal. App. 2d 364, (p. 378):

"We perceive no grounds, legal or otherwise, why an accused should be permitted to refuse the services of the public defender, waive his right to counsel unless one of his choice is appointed, and then have his conviction reversed because he did not choose to be represented by the legal aid provided by the county."

Again, in *People v. Duncan*, 175 Cal. App. 2d 372, (p. 382):

"Defendant's right to represent himself no more includes the right to reject the services of the public defender and postpone indefinitely the trial, allowing him to at his leisure attempt to find counsel who will serve without charge, than does defendant's right to counsel."

And, as said in *People v. Howard*, 135 Cal. App. 2d 95, (p. 98):

"No good reason was given by the defendant for terminating the services of his counsel, who was present and ready to act at all stages after the arraignment, and no prejudicial error appears."

The court did not err in not appointing counsel for defendants at the time they dismissed the public defender on the day of trial. As the People suggest, the record clearly shows defendants were attempting improperly to delay the proceedings by a last-minute dismissal of the public defender.

It is urged the court deprived defendants of an opportunity to present alibi defenses. Defendants did not cross-examine any of the People's witnesses. When the People rested, the trial judge said to defendants: "The

People have rested. Let the record show the jurors are not present in the courtroom. The People have rested, and as soon as the jury comes back will be the time for the defendants to produce any evidence that they desire to produce. I might state that you are not required to testify. This is a criminal proceeding and, obviously, in a criminal proceeding a defendant is not required to testify against himself, and I think you should be informed of that. You do have the right to have some witnesses subpoenaed on your behalf. In the event they have not already been subpoenaed, we will serve the subpoenas if you will give us the name and addresses of the persons that you desire to have subpoenaed. I am wondering if you are ready to proceed at this time when the jury returns." Defendant Meyes stated he was not qualified to defend himself, and said, "I would like to ask again that the Court stop this illegal procedure and grant us the opportunity to have counsel to represent us." The judge stated a recess would be taken and "if you do not wish to present any evidence, why, then the matter will then be closed; that is, as far as the evidence. Then the District Attorney can argue it and each of you can argue on your behalf, and the Court will instruct the jury." After the recess, with the jurors in the box, the judge stated: "Mr. Douglas and Mr. Meyes, the People have rested, and this is the time to put on any evidence that you desire to put on. Mr. Douglas, do you [fol. 278] have any witnesses you desire to call?" Defendant Douglas replied: "We are not ready, your Honor. We do not have proper counsel. We have no evidence to put on." The judge stated: "Mr. Meyes, do you have any witnesses you desire to call?" Defendant Meyes replied: "Your Honor, we cannot put on any defense without a lawyer, without counsel." The judge said: "Well, the defendants not having presented any evidence, they *resisting* presenting any evidence, I assume then that the defendants rest." After further discussions between defendants and the court in which defendants asked the court to reconsider giving them lawyers and sufficient time to obtain an attorney, the court stated: "You have been given all the opportunity. We need you not to discharge your counsel yesterday, and I told you what the consequences might be, and you, knowing that, you deliberately determined to discharge

your counsel. . . . Well, that matter has been determined, and now is the time for argument, and you will be given an opportunity to argue the case; but you will be confined to the facts as produced here from the witness stand." The district attorney then argued to the jury. At its conclusion, the court invited defendants to argue. They declined the invitation. It is obvious defendants were not denied the opportunity to present alibi defenses.

It is contended the court erred in instructing the jury on the issue of the prior felony convictions of defendant Meyes. Meyes denied the prior convictions. The People proved them. Meyes did not testify. Before evidence was [fol. 279] introduced to prove the priors, the judge advised Meyes it was his right to admit the priors out of the presence of the jury and if he did so the jury would not know of them. In its instructions the court merely told the jury that the information alleged, among other things, that Meyes had suffered the prior convictions. "The law is established in California that when a defendant is charged in an information or indictment with having suffered a previous conviction, if he denies at the time of his arraignment that he has suffered such previous conviction the issue thus joined must be tried by the jury which tries the issue upon his plea of not guilty to the offense charged in the information or indictment. (Pen. Code § 1425.)" (*People v. Kingsbury*, 70 Cal. App. 2d 128, 131.) The court did not err.

The Court adjudged Meyes to be a habitual criminal under section 644 of the Penal Code. In doing so, the court stated: "You have previously been sentenced to the State Prison for the crime of second degree murder, and I think you also have been sentenced, or you have a term as a parole violator still remaining. In any event, you have previously been found to be a habitual criminal under Section 644a of the Penal Code. This Court also finds that you are a habitual criminal under such Section; that is, 644a." The sentence against Meyes is stated in the margin.¹

¹The sentences in this case, in Count number 1, are to be consecutive to the previous sentences that you have suffered, that is, consecutive to the sentence for second degree

[fol. 280] Defendant Meyes contends the court erred in adjudging he is a habitual criminal. He asserts "he has not served the prerequisite number of 'separate terms' in state prison, required by the statute, before he could lawfully be adjudged a habitual criminal."

"Every person convicted in this State of the crime of robbery, burglary of the first degree, . . . who shall have been previously twice convicted upon charges separately brought and tried, and who shall have served separate terms therefor in any state prison and or federal penal institution, either in this State or elsewhere, of the crime of robbery, burglary, . . . shall be adjudged a habitual criminal and shall be punished by imprisonment in the state prison for life." (Pen. Code, 661a.) The record shows that Meyes was sentenced to state prison for burglary of the second degree on January 12, 1948. He was received in San Quentin on January 24, 1948. The term of his sentence was fixed as one to fifteen years. He was paroled on January 24, 1950. His parole was suspended on August 17, 1950. He was not returned to prison as a [fol. 281] parole violator until March 24, 1951. He was sentenced to state prison for robbery of the first degree on one count on November 30, 1950. Also on November 30, 1950, he was sentenced to state prison on a second count of robbery of the first degree, the sentence to run concurrently with the first count of robbery on which he was sentenced that date. Nothing was said in the judgments of November 30, 1950 as to whether the sentences were to run concurrently or consecutively with the prior sentence of 1948. However, the record of the department of corrections

murder, and also whatever term you may have left upon your parole violation. On Counts number 2 and 3 and 12, they are to be concurrent with Count number 1. Count 4 is to be consecutive to Counts 1, 2, 3, and 12. Count 5 is to be consecutive to Count Number 4. Count number 6 is to be consecutive to Count number 5. Count number 7 and 8 are to be concurrent with Count number 6. Count number 9 is to be consecutive to Count number 6, 7 and 8. Counts number 10 and 11 are to be concurrent with Count number 9, and Count number 13 is to be consecutive to Count 9, 10 and 11."

shows that the sentences of November 30, 1950 are to run concurrently with the prior term. On January 12, 1951 he was sentenced to state prison on one count of robbery of the first degree, the sentence to run consecutively with time on parole and with any other sentence he was about to serve. Also on January 12, 1951 he was sentenced to state prison on a second count of robbery of the first degree, the sentence to run concurrently with the first count of robbery on which he was sentenced that date and consecutively with time on parole and with any other sentence he was about to serve. On April 25, 1956 the term on the original commitment for burglary was refixed at three years and the terms of the second commitment were refixed in the aggregate of ten years, to run consecutively with the prior term pursuant to section 3024d of the Penal Code. On June 3, 1957 he was released on parole. On June 2, 1958 his parole was suspended.

[fol. 282] Meyes in effect says he is still serving the term for burglary and the terms imposed in 1950, and that the 1951 sentences do not begin to run until he has completed the outstanding 1948 and 1950 terms in their entirety.

When Meyes was returned to prison on March 24, 1951 the sentences on the 1950 judgment ran concurrently with the prior burglary sentence. (Pen. Code, § 669; *Ex parte Casey*, 160 Cal. 357, 358.) Sentences are concurrent when they run together during the time the periods overlap. (*In re Roberts*, 40 Cal. 2d 745, 749.) A part of a term is a term. (*People v. Mangano*, 87 Cal. App. 2d 765, 767-8.) The time during which Meyes served on parole must be credited to him as time served on the sentence he was serving when paroled. (*Ex parte Casey*, 160 Cal. 357, 358.) Interruption of imprisonment in state prison due to the fact the prisoner is tried for another offense is an interruption "by legal means" for the purpose of Penal Code, section 2900, which says, "if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term." (39 Cal. Jur. 2d 667, 740.)

The first part of the burglary term—that is, until Meyes began serving the sentences on the 1950 convictions—was served separately. He began the sentence on the 1950 con-

[fol. 283] victions concurrently with the prior burglary sentence. (*People v. Sukoritzen*, 138 Cal. App. 2d 159, 161-4) The sentence on the prior burglary conviction, having been fixed at three years, terminated on August 28, 1951. After August 28, 1951 he was serving a separate term on the 1950 convictions. Thus it appears Meyer had served separate terms at the time sentences were imposed in the present action. We conclude he was properly adjudged to be a habitual criminal.

Defendant Meyer says the sentences as to him should have been concurrent, and concurrent with any other sentence theretofore imposed.

Section 669 of the Penal Code provides that where one is convicted of two or more crimes in the same proceeding, the punishment for any of which is life imprisonment, the terms on the other convictions "shall be merged and run concurrently with such life term." As stated in *People v. Tucker*, 127 Cal. App. 2d 436 (p. 437):

"Having been convicted on the four charges of robbery and adjudged a habitual criminal under section 644 of the Penal Code, the status of the appellant at the time of sentence herein was that of one convicted of two or more crimes the punishment for which is expressly prescribed to be life imprisonment under the terms of section 669. Therefore, the terms of imprisonment should be merged and run concurrently with such life term."

(Also see *In re Rye*, 152 Cal. App. 2d 594, 595-6.) It is manifest the sentences imposed on Meyer were in violation of section 669 of the Penal Code. There is no need of a reversal [fol. 284] of the judgment or of further proceedings in the superior court because of the sentences. It is sufficient to declare that the several sentences are merged and run concurrently with the life term imposed on Meyer as a habitual criminal.

It is asserted section 644 of the Penal Code is unconstitutional as a denial of due process and that it amounts to a bill of attainder. Classification of a defendant as a habitual criminal by reason of his prior convictions does no violence to any privilege granted by the state or federal

Constitution, nor does it deprive a defendant of due process of law. The statute does not create a substantive offense. It merely increases the penalty on conviction of a subsequent felony. (*People v. Dunlop*, 102 Cal. App. 2d 314, 316-17.) The fact that the allegations of the information with respect to the priors did not name specific statutes under which Meyes had been convicted does not affect the validity of the information or the judgment as to him, as he argues. Nor was it improper for the district attorney to allege the priors in the information. (Pen. Code, §§ 969, 969a, 1025.)

Opening and closing briefs were purportedly filed by defendant Meyes in propria persona. Douglas has adopted the briefs filed by Meyes. In the closing brief, for the first time, it is said this court should have appointed counsel to represent defendants on this appeal and that its failure to do so was substantial error. On January 7, 1960 the memorandum by the presiding justice set out in the margin, [fol. 285] agreed to by a unanimous court, was filed.² As

² "I think the request should be denied. The defendants were convicted in a jury trial of 12 felonies, 10 of them being robbery of the first degree, one assault with attempt to commit murder and one assault with a deadly weapon. On the basis of the former convictions Meyes was found to be an habitual criminal. I have gone through the reporter's transcript. The witnesses for the People described each offense and identified the defendants as the perpetrators. The defendants did not testify.

"They were arraigned August 18, 1959. The Public Defender was appointed as counsel for each defendant. They pleaded not guilty August 21 and their trial was set for September 30. At the inception of the trial the defendants against the advice and even remonstrance of the court, refused to be represented by the Public Defender and asked for appointment of counsel of their own choice. The Deputy Public Defender sought a continuance to give him more time to prepare the case or have defendants find other counsel but the continuance was denied. The Deputy Public Defender tried in every way to assist the defendants but they 'heckled' him and threatened to continue to heckle him

therein stated, we found "that no good whatever could be served by appointment of counsel." We are still of that opinion. Further, the brief filed by Meyes conform to the rules in all respects, are well written, present all possible [fol. 286] points clearly and ably with abundant citation of pertinent authorities, and were no doubt prepared by one well versed in criminal law and procedure and in brief writing. There was no prejudicial error in not appointing counsel for defendants on the appeal.

There are no other assignments of error.

The judgment as to defendant Meyes is modified and it is declared that the several sentences as to him are merged and run concurrently with the life term imposed on him as a habitual criminal; in all other respects the judgment as to Meyes is affirmed. The order denying Meyes' motion for a new trial is affirmed. The judgment and order denying a new trial as to defendant Douglas are affirmed.

Vallee, J.

We concur.

SHINN, P. J.

FORD, J.

[fol. 287] Clerk's Certificate to foregoing transcript omitted in printing.

in his efforts to represent them. Finally they discharged him. In addressing the court the defendants were obstreperous and insolent. They refused to cross-examine witnesses or to produce any witnesses of their own. At no time was any representation made to the court by either defendant except by general statements that if they were represented by attorneys they could prove that the charges were a frame-up of the People's witnesses, whom they described as a bunch of gamblers, and the police.

"The evidence of guilt was conclusive. The defendants would have had competent representation by the Deputy Public Defender. It is apparent to me that no good whatever could be served by appointment of counsel."

[fol. 288]

February 27, 1961.

2nd District, Division 3, Crim. No. 7040.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA, IN BANK

PEOPLE,

v.

DOUGLAS ET AL.

ORDER DENYING HEARING AFTER JUDGMENT BY DISTRICT
COURT OF APPEALPetition of Bernie Will Meyes, (appellant), for hearing
Denied.Traynor, J. is of the opinion that the petition should be
granted.

Gibson, Chief Justice.

I, William I. Sullivan, Clerk of the Supreme Court of the
State of California, do hereby certify that the preceding is
a true copy of an order of this Court, as shown by the
records of my office.Witness my hand and the seal of the Court this 2 day of
Mar. A. D. 1961. William I. Sullivan, by Deputy Clerk.Filed, Feb. 21, 1961. William I. Sullivan, Clerk, by SF
Deputy.

[fol. 289] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS AND PETITION FOR WRIT OF CERTIORARI—October
9, 1961

On Petition for Writ of Certiorari to the Supreme Court
of the State of California.

On Consideration of the motion for leave to proceed
herein in forma pauperis and of the petition for writ of cer-
tiorari, it is ordered by this Court that the motion to pro-
ceed in forma pauperis be, and the same is hereby, granted;
and that the petition for writ of certiorari be, and the same
is hereby, granted. The case is transferred to the appellate
docket as No. 476.

October 9, 1961.

[fol. 197] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

2 Criminal No. 7040

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and
Respondent,

vs.

WILLIAM DOUGLAS AND BENNIE WILL MEYES, Defendants and
Appellants.

PETITION FOR HEARING IN THE CALIFORNIA SUPREME COURT
AFTER DECISION BY THE DISTRICT COURT OF APPEAL OF THE
STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVI-
SION THREE—February 3, 1961

To: The Honorable Phil S. Gibson, Chief Justice of the
Supreme Court of the State of California, and to the
Honorable Associate Justices Thereof:

The appellant, Bennie Will Meyes, on behalf of himself
and on behalf of the appellant, William Douglas, respect-
fully petitions for a hearing by the Supreme Court of
California of the above entitled case, decided by the Dis-
trict Court of Appeal Second Appellate District, Division
Three, on December 29th, 1960, rehearing denied, January
26, 1961, because said hearing is necessary to resolve con-
flicts in decisions between the District Court of Appeal and
because the opinion of the District Court of Appeal com-
pletely misinterprets the law applicable to this case as
announced by the United States Supreme Court in the case
of *Powell v. Alabama*, 287 U.S. 45, as well as *In re Newbern*,
350 Pac. 2d 116, 119, as announced by this Court, and other
decisions hereinafter cited.

[fol. 198]

Conclusion

For the aforementioned reasons the appellants respect-
fully petition that this Court grant a hearing in this cause
in the interest of justice.

Respectfully submitted, Bennie Will Meyes

[fol. 199] STATE OF CALIFORNIA,
County of Sacramento, ss:

CERTIFICATE OF VERITY, AND SERVICE BY UNITED STATES MAIL.

[Added by Statutes of 1957, Ch. 1612.1]

Whereas, under penalty of perjury, I hereby certify and declare that I am a party to the within "Appellant's Petition for a Hearing in the California State Supreme Court" and have read same and know the contents thereof, that the matters and things stated therein are true of my own knowledge except those things stated therein to be on information and belief, and as to those matters and things I verily believe them to be true;

That I am a citizen of the United States, over the age of twenty-one years, and am an inmate in the California State Prison at Folsom, Represa, County of Sacramento, State of California; that true, correct and duplicate copies of said noted documents has been placed in the hands of the proper Institutional authorities at said Folsom State Prison, for mailing, addressed as follows:

1. One copy: Attorney General of the State of California, 600 State Building, Los Angeles, California.
2. California State Supreme Court, 600 State Building, Civic Center, Los Angeles, California.

That said noted document was then placed in an envelope and was sealed, with postage thereon fully pre-paid, thereafter to be, on February 2, 1961, deposited in the United States Mail at Represa, California; that there is daily mail delivery service by U.S. Mail at the places so addressed and the places so addressed.

Submitted this 2nd day of February, 1961 at the Folsom State Prison, Represa, California.

Bennie Will Meyes.

Office Supreme Court, U.S.

FILED

MAR 2 1962

JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. ~~433~~ 34

WILLIAM DOUGLAS and BENNIE WILL MEYES,

Petitioners,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA

BRIEF FOR PETITIONERS

MARVIN M. MITCHELSON
BURTON MARKS

Counsel for Petitioners

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 476

WILLIAM DOUGLAS and BENNIE WILL MEYES,

Petitioners,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

**ON WRIT OF CERTIORARI, TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

BRIEF FOR PETITIONERS

The order of the California Supreme Court denying hearing after judgment by the District Court of Appeal was filed March 2, 1961 (R. 194).

The Opinion Below

The Opinion of the District Court of Appeal is separately set forth in the Record (R. 183-193), reported at 10 Cal. Rptr. 188.

Jurisdiction

The jurisdiction of this Court was invoked under 28 U.S.C. 1257(3); the Petition for Writ of Certiorari was granted on October 9, 1961. On the same date, an order was granted permitting petitioners leave to proceed *in forma pauperis* (R. 195).

Statement of the Case

THE TRIAL

Petitioners were tried and convicted of thirteen felony counts.¹ At the commencement of the trial, they were represented by Los Angeles County Deputy Public Defender Norman Atkins, who asked for a continuance of trial on the grounds that: (1) He was unprepared and (2) there was a conflict of interest between petitioners and petitioner Douglas ought to be assigned private counsel.² The motion for continuance and for appointment of other counsel was denied (R. 36). These motions and some examination of the jury panel was had during the morning hours.

After the noon recess, the petitioners asked to have Mr. Atkins relieved as their counsel because he was not prepared to defend them ("Defendant Douglas: I would like to clarify something. As I said, I want to dismiss Mr. Atkinson [sic] for the reason that he is not properly prepared to defend me; but, now, I would like to obtain my own counsel, and I can't fight this case myself. I need counsel, but I don't think Mr. Atkinson is prepared to defend

¹ Armed robberies, ten counts; assault with a deadly weapon, two counts; assault with intent to commit murder, one count.

² See California Penal Code Section 987a set forth in the Record at Pages 70-71.

me, and for that reason I would want to dismiss Mr. Atkinson" (R. 76)). After considerable palaver concerning the "unqualified" dismissal of Mr. Atkins (R. 74-83), he was relieved (R. 83).

Thereafter, each petitioner appeared *pro se* through the trial and appellate proceedings, though not by choice. They immediately (R. 98 *et seq.*) and continuously requested counsel prepared to defend them through the remainder of the trial whenever they were entitled to cross-examine (R. 110, 116, 120, 125-126, 129, 132, 135-136, 138, 142, 146, 151); at the time for presentation of the defense³ (R. 151 *et seq.*); at the time for defense argument⁴ (R. 164 *et seq.*), and at motion for new trial and at time set for sentence (R. 171-175).

THE APPEAL

Petitioners each filed a separate Notice of Appeal (R. 24, 26); each applied for appointment of counsel on appeal and were denied counsel by the District Court of Appeal (R. 182) on the grounds that the Appellate Court had read the record after the request for counsel and came to the conclusion that " . . . No good whatever could be served by appointment of counsel" (R. 193).

Petitioner Douglas's request for a separate trial transcript to prepare his briefs on appeal was denied (R. 182) even though he was in a different prison, 119 miles away

³ There was no cross-examination.

⁴ There was no defense.

⁵ There was no defense argument.

from petitioner Meyes.⁶ Although petitioner Douglas refused to adopt petitioner Meyes' brief (R. 182), the Appellate Court thought otherwise (Opinion, R. 192: "Douglas has adopted the briefs filed by Meyes").

There is a question as to whether there was ever an appellate review of petitioner Douglas's case. On the other hand, if the appellate court's reasoning is accepted, then both petitioners petitioned for a hearing in the California Supreme Court, and their petitions were denied (R. 194).

⁶ A letter from the California Department of Corrections addressed to the writer dated July 25, 1961, reads as follows:

"Dear Sir:

Re: A-8164 MEYES, Bennie Will
A-55779 DOUGLAS, William

This is in reply to your letter of July 20, 1961 inquiring as to the location of the two inmates in question following their commitment in 1959.

Bennie Will Meyes A-8164:

November 3, 1959

Received at Southern Reception
Guidance Center, Chino.

November 11, 1959

Transferred to Northern Reception
Guidance Center, Vacaville.

December 30, 1959

Transferred to Folsom and has
remained there since.

William Douglas A-55779:

November 5, 1959

Received at Southern Reception
Guidance Center, Chino.

January 5, 1960

Transferred to San Quentin and
has remained there since.

You will note that, other than the period from November 5, 1959 to November 11, 1959 they have been at different locations.

The distance between Folsom and San Quentin is 119 miles.

Very truly yours,

RICHARD A. McGEE
Director of Corrections

By

Peter J. Murry
Chief Records Officer"

Specification of Errors

At both the trial and appellate level, petitioners were denied assistance of counsel and due process of law.

Summary of Argument

This is an extraordinary case where two indigent defendants at the inception of a criminal trial involving thirteen felony counts were deprived of counsel by the trial court which insisted that the defendants be represented by one deputy public defender who had stated to the court that he was unprepared and that a conflict of interest existed between the defendants.

The trial court has committed egregious and reversible error and denied each of the appellants assistance of counsel and due process of law in failing to appoint separate counsel for petitioner Douglas, and in failing to grant a short continuance at the request of their counsel.

The error was further compounded by the District Court of Appeal for the State of California, Second Appellate District, Division Three, when it refused petitioner Douglas's request for a separate transcript of the proceedings had at trial where Douglas was located in a prison 119 miles away from petitioner Meyes who was in possession of the transcripts of the record; and when the court denied each petitioner's request for aid of counsel on appeal. The action of the California Supreme Court in denying a hearing was an affirmation by California's highest court that indigents are not entitled to the protection of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

The facts of the instant case forcefully illustrate that due process of law requires not only that an indigent de-

fendant be given a transcript of lower court proceedings where appellate review is available, but that as a matter of right and necessity, he is entitled to appointment of counsel.

Preface to Argument

In order to more fully understand the situation—and the problems—some of the background material must be added.

On June 22, 1959, a second murder trial ended in petitioner Meyes' conviction of murder in the second degree. His co-defendant at that trial was petitioner Douglas. The victim was a Los Angeles police officer, Eugene Nash. Douglas was acquitted. The prior murder trial of both petitioners had ended in a mistrial, the jury being unable to reach a verdict.

In both murder trials, Meyes had been represented by Los Angeles County Public Defender Paul Breckinridge, and Douglas by attorney Marvin Mitchelson, co-counsel for petitioners herein.

In the murder trials, the prosecution had introduced evidence of the instant robberies and assaults (but one)⁷ in an attempt to prove that defendants knew they were wanted by the police and were "lying in wait" when the police came to apprehend them, and thus establish the basis for a first degree murder charge.⁸

⁷ The facts of the murder case are reported in *People v. Bennie Will Meyes*, 198 A.C. Appellate Reports, 512. As of this writing, the petition for hearing has been taken to the California Supreme Court, but no response has been had from that Court.

For some of the *non sequitur* applications by the California courts permitting the admission of "other offenses", see 7 U.C.L.A. Law Review 463.

⁸ California Penal Code Section 189: "All murder which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of wilful, deliberate, and premeditated killing, or which

After unsuccessfully trying both defendants for first degree murder, the substantive charges of robbery and assault were filed against the petitioners, and a new public defender was appointed to defend the petitioners (R. 9, 28).

The function of the public defender is defined by statute⁹ and case law.¹⁰

In the case of a conflict of interest of two or more defendants, the entire staff of the Public Defender is considered as one attorney.¹¹

When Mr. Atkins came to court on September 30, 1959, the date set for trial, he had admitted (R. 29) that he had been in trial daily since August 21, 1959, the date of plea of the defendants (R. 9), and had no opportunity to prepare the case, or the defense, or to read the transcripts of the murder trial. The prosecuting attorney, on the other hand, had been through both murder trials and was fully prepared to prosecute petitioners on testimony which he had heard twice before (R. 32-33). His argument to the court, against a continuance, was not that Mr. Atkins was not prepared, but that the defendants were! (R. 32-35) And, in the same breath as it were, denied that the two defendants one (Meyes) convicted of murder and with three prior convictions of burglary and robbery (R. 7-8) had no conflict of interest with his co-defendant who had no felony convictions because *both defendants had previ-*

is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, mayhem, or any act punishable under Section 288, is murder of the first degree; and all other kinds of murders are of the second degree."

⁹ California Government Code Section, 27,700 et seq.

¹⁰ *People v. Kerfoot*, *infra*, note 12 and *People v. Mattson*, *infra*, 51 Cal. 2d 717, 336 P. 2d 937 (1959).

¹¹ *People v. Kerfoot*, *ibid*.

ously denied participation in the offenses that were now being charged against them! (R. 35)

ARGUMENT

A.

There Was a Definite Conflict of Interest Between the Defendants and, as a Matter of Due Process of Law, the Defendant Douglas Was Entitled to Representation by Either Counsel of His Own Choosing or by Court Appointed Counsel; and a Reasonable Continuance for That Purpose Was Required.

The request of the public defender and his representation to the court was as follows (R. 36):

"Mr. Atkins: Your Honor, first off, let me make something clear. I am not asking for a dismissal of the charges. I am asking for a continuance. Mr. Carr says, 'What has happened?' He said, 'Past history proves that no conflict appears.'

"What has happened since then? Well, something has happened since then, your Honor. Douglas was acquitted and Bennie Meyes was convicted. Now, I can defend both of them, but I am at a disadvantage in that if I defend both of them the stigma of the murder conviction as to Bennie Meyes—I have to talk out of one side of my mouth as to Bennie Meyes and out of the other side of my mouth as to Mr. Douglas.

"The Court: I do not know why—

"Mr. Atkins: I do not think that it is fair for Mr. Douglas. He should have an attorney who would represent him and him alone who can make the best use of the fact that an acquittal was earned on his behalf in the murder trial. That is a conflict. I submit your Honor that

that is a conflict in presenting the case which should be obvious to anyone that two lawyers are necessary.

"The Court: All right, the motion is denied."

The Record at Pages 36-37 indicates the public defender's request for a continuance and the reasons therefor on behalf of both petitioners:

"Mr. Atkins: Your Honor, on behalf of Mr. Douglas, he has asked me to make a motion for a continuance so that he may retain the attorney which he talked to show name is Leo Brennan, and has made arrangements to have him come in and defend him; and he wishes me to bring that up, to bring that to your Honor's attention. He has been in touch with Leo Brennan and has made arrangements to have Leo Brennan defend him.

"The Court: Well, this matter has been on the calendar before, and there have been three continuances before, three motions for continuance before. I cannot hear these matters piecemeal. The motion is denied.

"Mr. Atkins: On behalf of Bennie Meyes, Mr. Meyes requests a continuance. He does not feel that I am adequately prepared for trial and requests a continuance for that reason and wishes to address the Court at this time.

"The Court: The motion will be denied. Swear the jury."

The facts in the instant case are, though not on "all fours", almost uncanny in their similarity to the facts of another California case, *People v. Kerfoot*, 184 Cal. App. 2d 622.¹²

¹² *People v. Kerfoot*, 184 Cal. App. 2d 622, 7 Cal. Rptr. 674, filed September 16, 1960 District Court of Appeal, Second District Division One. Hearing den. November 10, 1960.

In the *Kerfoot* matter, attorney Harold J. Ackerman, a private practicing attorney was appointed by Division One to represent

In the *Kerfoot* case, two defendants Demes and Kerfoot were charged jointly with murder. They were at one time represented by private counsel. The first case ended in a mistrial. On the retrial, the public defender was appointed to represent both the defendants. The public defender represented to the court that there was a possibility of a conflict of interest between the defendants, but the court found there was no such conflict (the court having heard the case before). Again, in the *Kerfoot* case on the date set for trial, the public defender stated he would be willing to represent both of the defendants in the case; however, that he had just completed a protracted case on the previous Friday, that he had no opportunity to prepare, and that again, there was a possibility of conflict of interest between the defendants. The public defender stated he had not read the prior transcripts of the trial, that the prosecution was asking for the death penalty, that Kerfoot had told him that the prosecution contended that he had committed the actual murder and that Demes was supposed to have driven the get-away car—that in any argument on penalty, one attorney would be at a severe disadvantage if he had to argue penalty as to both defendants, that under some theories, Demes could be deemed less culpable. The public defender stated that he would represent either or both of the defendants, but if he did so, he would have to have a continuance to prepare for trial. The deputy district attorney

the defendant Kerfoot on appeal. In the instant case, the opinion was filed December 29, 1960, by Division Three of the same appellate district. All three divisions and justices (there are now four divisions) occupy offices in the same building and hear arguments in the same court room.

The trial in the *Kerfoot* case was set for September 14, 1959, just sixteen days before the instant case went to trial, and although a different judge (William E. Fox) tried the case, the criminal departments of the Superior Court were all located on the seventh and eighth floors of the Hall of Justice, Los Angeles, California.

stated that he felt there was no conflict of interest. The judge indicated that if the defendants were found guilty of murder in the first degree, he could then perhaps appoint another attorney for Demes at the penalty trial. The judge inquired of Kerfoot as to whether he wanted the public defender to represent him, and Kerfoot replied "No Sir". The judge then said, "You will not accept the services of [the public defender] who the court has heretofore appointed?" and Kerfoot answered, "That is right. I don't want no public defender, I want private counsel". The judge apparently did not remember that he had theretofore relieved the public defender of representing the defendants. Demes was then asked if such was his feeling too, and he said it was, and further said, "There is a conflict of interest. So far as I am concerned, I want separate counsel from Mr. Kerfoot". (For further details, see *People v. Kerfoot*, 184 Cal. App. 2d 622, 7 Cal. Rptr. 674, 678-680.)

In supporting its proposition that there had been a conflict of interest, the court in the *Kerfoot* case cites extensively from this court's opinion in *Glasser v. United States*, 315 U.S. 60, 42 S. Ct. 457, 86 L. Ed. 680, and *Johnson v. Zerbst*, 304 U.S. 458, 462, 463, 58 S. Ct. 1019, 1022, 82 L. Ed. 1461 [1465, 1466]. It would be an idle act to repeat back to this Court what it has already said with regard to the application of the Fifth and Sixth Amendments and the Fourteenth Amendment to the Constitution as applied in *Powell v. Alabama*, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158, 84 A.L.R. 527.

In the *Kerfoot* case, the Court stated (7 Cal. Rptr. 674, 686): "We call particular attention to that part of the *Glasser* case which indicates that even in the absence of a conflict of interest, the same rule would apply since counsel's "effectiveness" might be impaired by adding to his burden the representation of another co-defendant." (Emphasis added by the Court) . . . "

In the case of *People v. Lanigan*, 22 Cal. 2d 569, 140 P. 2d 24, 148 A.L.R. 176 cited in the *Kerfoot* case, the court pointed out that the right as provided by the Sixth Amendment to the United States Constitution is protected in California by Article I, Section 13 of the California Constitution and further stated in effect that they adopted the philosophy stated in the *Glasper* case.

~~The *Lanigan* case stated in 22 Cal. 2d at Pages 576-577, 140 P. 2d at Page 29: " . . . and counsel should not be hampered or embarrassed by being compelled to choose one course as against the other because of the action taken by the court."~~

In a further comparison of the instant case with the *Kerfoot* case, it should be remembered that the public defender in *Kerfoot* asked for a continuance because he was not prepared and had not read the transcripts. The court in *Kerfoot* said in 7 Cal. Rptr. 674 at Page 689: " . . . If the public defender, a skilled, trained and experienced lawyer, needed time to prepare, how much more so did appellant need time within which to at least read the transcript and understand what had been testified to in the prior case. A reading of the transcript at the second trial shows that there were many situations where intelligence cross-examination would have been of great assistance in ascertaining the truth. Whether the truth would have been of benefit or detriment to the appellant it cannot be said, because as it was, there was *no* cross-examination. See *People v. Mattson*, 51 Cal. 2d 777, footnote at Page 790, 336 P. 2d 937, for a statement of the right to counsel and the time within which to prepare a defense. . . . "

¹ *People v. Mattson*, 336 P. 2d 937, 947 footnote 5.

² . . . Where federal due process requires appointment of counsel, the state court's appointment must be effective. It must afford counsel time and opportunity and impose upon him the duty to

B.

The Petitioners Were Denied Assistance of Counsel at the Appellate Level and Due Process of Law (Petitioner Douglas in Two Respects).

Petitioners each filed a separate Notice of Appeal. They also filed a request for counsel on appeal, R. 18, although the record does not specifically state that the defendants were indigent, the fact that they had a public defender represent them at trial and that they were imprisoned at the time the request was made would seem to indicate that they were indigent. Furthermore, the Request for Counsel filed with the District Court of Appeal carry with them an affidavit *in forma pauperis*.

In 1956, this Court established the general rule in *Coffin v. Illinois* (1956), 351 U.S. 12, 100 L. Ed. 891, 76 S. Ct. 385, 35 A.L.R. 2d 1055, reh. den 351 U.S. 958, 100 L. Ed. 1480, 76 S. Ct. —, that an indigent convicted of crime is, as a matter of constitutional law, entitled to state aid in obtaining appellate review of trial errors where review of such errors is available to persons able to pay the attendant expenses.

It would thus seem that under the *Coffin* rule, petitioner Douglas was denied his constitutional right to a second on

consult with defendant and investigate and prepare the case for trial citations omitted. The accused has the right to counsel at every step of the proceedings leading to conviction, not only to effective representation at the trial on the merits but also to the advice of counsel as to whether a plea of guilty is appropriate citations omitted, and, where decisions must be made before the case is at issue, to appointment of counsel at a time which will enable defendant to make such objections citations omitted.

Similarly the California right to counsel requires an effective not a mere pro forma appointment. Counsel must be afforded time and opportunity for investigation and consultation with defendant in the preparation of the defense citations omitted.

appeal and due process of law and equal protections under the Fifth and Fourteenth Amendments to the United States Constitution.

The second implication of the *Griffin* case enunciated as a comment in 55 A.L.R. 2d 1072, 1985 is as follows: " . . . the essence of the Supreme Court's ruling in the *Griffin* case is that a person convicted of a crime cannot be put to a substantial disadvantage with respect to appellate review of his conviction merely because he is poor. Surely a substantial disadvantage exists where an appellant, because lacking the money with which to employ counsel, is forced to appear pro se before the appellate court. Thus, the establishment of the rule that a state must, as a matter of federal constitutional law, provide indigents with the assistance of counsel to prosecute appeals in criminal cases would appear to be no more than a logical extension of the *Griffin* doctrine."

The holding of the *Griffin* case has been affirmed by this Court, in *Burns v. Ohio*, 360 U.S. 252, 3 L. Ed. 2d 1209, 79 S. Ct. 1164, and reiterates the caveat of *Griffin* that "We are confident that the State will provide corrective rules to meet the problem which this case lays bare."

Just as the Illinois Supreme Court in the *Griffin* case had broad power to promulgate rules of procedure and appellate practice, so does the Supreme Court of the State of California. The California Supreme Court in the case

¹⁴ Section 1247k of the California Penal Code provides as follows:

"The Judicial Council shall have the power to prescribe by rules for the practice and procedure on appeal, and for the time and manner in which the records on such appeal shall be made up and filed, in all criminal cases in all courts of this State.

"The Judicial Council shall report the rules prescribed by it to the Legislature on or before March 31, 1943.

"The rules reported as aforesaid shall take effect on July 1, 1943, and thereafter all laws in conflict therewith shall be of no

of *People v. Hyde*, 51 Cal. 2d 152, 154, 331 P. 2d 42 promulgated the following rule: "It is our opinion that the appellate courts upon application of an indigent defendant who has been convicted of a crime, should either (1) appoint an attorney to represent him on appeal or (2) make an independent investigation of the record and determine whether it would be of advantage to the defendant or helpful to the appellate court to have counsel appointed. This investigation should be made solely by the justices of the appellate court. After such investigation, appellate court should appoint counsel if, in their opinion, it would be helpful to the defendant or the court, and should deny the appointment of counsel only if in their judgment such appointment would be of no value to either the defendant or the court".

This procedure has been followed in the California Courts, the instant case being an example of the procedure. See *People v. Brown*, 55 Cal. 2d 64, 375 P. 2d 1072, 9 Cal. Rptr. 816, 819 (concurring opinion of Traynor, Justice) wherein the Justice stated that: "It is my opinion, however, that the holding in *People v. Hyde*, 51 Cal. 2d 152, 154, 331 P. 2d 42, should be expanded to require the appointment of counsel on appeal for all indigent defendants convicted of felonies". The footnote of Justice Traynor goes extensively into the question of the problem since the *Griffin* case.

Justice Traynor then goes on to say: "The question calls for resolution even though we appointed counsel to represent defendant in this court. The question cannot re-

further force or effect. (Added Stats. 1941, c. 562, p. 1945 § 1. As amended Stats. 1943, c. 4, p. 111, § 2, effective Jan. 14, 1943.)"

The rules on appeal for the Supreme Court and District Courts of Appeal of the State of California may be found in West's Annotated California Code, Volume 23, "Civil and Criminal Rules".

main in abeyance. This very case illustrates the recurring practice of the District Court of Appeal, Second District, Division Three, of referring the question of the appointment of counsel to the local bar association committee (see *People v. Logan*, 137 Cal. App. 2d 331, 332, 290 P. 2d 11), and a consequent countervailing practice of this Court to then grant a hearing even on its own motion whenever there has been no appointment of counsel. There would be no end to such wasteful procedure were the question deemed moot each time this Court granted a hearing and appointed counsel. The question should be settled in the interest of effective appellate court administration."

Further, Justice Traynor states: "Denial of counsel on appeal would seem to be a discrimination at least as invidious as that condemned in *Griffin v. People of State of Illinois*, *supra*. See *State v. Delaney*, Or., 332 P. 2d 71, 74-81; The Effect of *Griffin v. People of State of Illinois* on the States' Administration of the criminal law, 25 U. of Chi. L. Rev. 161, 170-171; Appointment of Counsel for Indigent defendants on Criminal Appeals, 1959 Duke L.J. 484, 488-489 . . ." ¹⁵

In the case of *People v. Gullick* (1961), 55 Cal. 2d 540, 360 P. 2d 62, 11 Cal. Rptr. 566, Justice Shauer of the California Supreme Court in his dissenting opinion indicates that the California Supreme Court, on a motion by the defendant Gullick to augment the record when he was without counsel, not only granted the motion but transferred the cause to be heard by itself and appoint counsel for Gullick (11 Cal. Rptr. 574, 576).

¹⁵ Note the District Court of Appeal in this matter was the same Division Three referred to by Justice Traynor in the instant case. Justice Traynor thought that the petition for hearing in the Supreme Court should be granted (R. 194). The *Brown* case was filed December 29, 1960, the Opinion of the District Court of Appeal in the instant case on December 22, 1960.

Aside from the actions of the California Supreme Court, in following the mandates of the *Griffin* case, the District Courts of Appeals have been rather consistent in denying that appointment of counsel is a matter of right on appeal.

People v. Gillette, 171 Cal. App. 2d 497, 341 P. 2d 398;

People v. Williams, 172 Cal. App. 2d 345, 341 P. 2d 741;

People v. Lenaberry, 176 Cal. App. 2d 588, 4 Cal. Rptr. 757;

People v. Vigil, 11 Cal. Rptr. 319.

The latest case (December 27, 1961) as of this writing is *People v. Cole*, 17 Cal. Rptr. 686, wherein the District Court of Appeal, Second Appellate District, Division Three, stated: "Upon his application for appointment of counsel, we read the records, determined the appeals to be without merit and denied the application. Defendant was notified, was given time to file a brief and has filed none".

In the Federal Courts, it has been held very recently that the right afforded by the Sixth Amendment to defendants in federal criminal proceedings to the aid of counsel extends to every phase of the appeal including the preliminary phase of obtaining permission to appeal *in forma pauperis* and that the court may not decline to appoint counsel in connection with the preliminary phases on the ground that the record reveals no meritorious issue, inasmuch as counsel may search the record for issues more meritorious than those suggested in the original application.

Anderson v. Heinze (C.A. 9), 258 F. 2d 479, cert. den. 358 U.S. 889, 3 L. Ed. 2d 116, 79 S. Ct. 131.

If the rule of the *Griffin* case that the right to counsel, due process and equal protections extends to every phase

of a criminal case, than the rule laid down in *Anderson v. Heinze, supra*, is more consonant with this Court's holding than that of the rule laid down by the California Supreme Court that in the alternative of appointment of counsel, the appellate court should review the record and determine whether or not appointment of counsel would be beneficial to the defendant.¹⁶ An example of the fallacy of the California Supreme Court in believing that due process can be afforded an indigent defendant where an appellate jus-

¹⁶ *People v. Oliver* (1961), 55 Cal. 2d 908, 361 P. 2d 592, 12 Cal. Rptr. 865, 870 (footnote 2 of Justice Shauer concurring and dissenting opinion).

"I recognize that on appeal the defendant is no longer presumed to be innocent. To the contrary, his guilt has been established and every presumption is in favor of the regularity of the proceedings in the trial court. I think, too, that those able justices of the District Court of Appeal who voluntarily undertake the added burden of independently researching the record for possible flaws in the judicial process as it has been applied to indigents, are to be commended for their devotion to the public interest. This devotion is so broad in scope that these justices give the skill and acumen of their seasoned experience to protecting the rights of the indigents, and at the same time to making unnecessary the expenditure of public funds which would ensue from the appointment of counsel, in cases wherein a paid attorney could accomplish nothing which would benefit the defendant, the state or the cause of justice. Those members of the Bar who (literally as *amici curiae*) likewise unselfishly aid the district courts in this work, are similarly to be commended.

"It bears emphasis that the duty assumed by the justices and the volunteer lawyers, is an exacting and onerous one. Under the majority decision in *People v. Hyde* (1958), 51 Cal. 2d 152, 154 [1], 331 P. 2d 42, it is, as I understand the opinion, the unspelled out but implied duty of the reviewing court (in cases wherein an indigent requests and is refused counsel) to examine the entire record (augmenting it if appropriate) to the end of reaching and manifesting a fully informed and confident conclusion that there has been neither a denial of due process nor error which is prejudicial within the compass of *People v. Watson* (1956), 46 Cal. 2d 818, 835-836 [12], 299 P. 2d 243. Only when the record shows such exacting care is it immediately apparent to subsequently petitioned reviewing courts that the quality of justice on appeal for the indigent is of the same standard as for the opulent."

tice reviews the record can be seen from a review of the facts in the instant case.

When Mr. Atkins stated to the trial court (R. 36): "I submit to your Honor that it is a conflict in presenting the case which should be obvious to anyone that two lawyers are necessary . . .", his opinion of what was "obvious" was "obviously" not apparent to the trial court, the three justices sitting in Division Three of the District Court of Appeal or to six justices of the California Supreme Court.

The practice of the California courts of having the record reviewed by an appellate justice in lieu of appointment

"To the everlasting credit of Deputy Attorney General Jack E. Goertzen who prepared the Respondent's Brief to the District Court of Appeal in the instant case, the subject of conflict of interest was raised and presented to the District Court of Appeals as follows (Respondent's Brief Page 42 et seq.): "However, appellants failed to present one point that deserves a consideration of this Honorable Court. That point is whether or not the trial judge should have granted the motion of the public defender on behalf of appellant Douglas to appoint separate counsel for Douglas. . . . Said motion was connected with a motion for continuance, and it was denied." Mr. Goertzen then sets forth in his brief the material set forth at Page 36 of the Record.

Respondent's brief was filed with the District Court of Appeal, Second Appellate District, Division Three, September 8, 1960 (R. 182), and of course the *Kerfoot* decision was filed September 16, 1960 (footnote 12, *supra*). Argument in the instant case was on December 21, 1960 (R. 182) after a hearing in the California Supreme Court had been denied. Since argument was waived and the cause submitted, Mr. Goertzen had no opportunity to present the *Kerfoot* case to the Court although the writer is informed and sincerely believes that this was done informally.

In any case, Mr. Goertzen did submit to the Court the *Larigan* case cited in the *Kerfoot* case, but pointed out that there might be a distinction in that "appellant Douglas did not in good faith want a separate attorney, but in effect merely wanted to stall the proceedings" (respondent's brief Page 49, citing as authority therefor the statement of Douglas (R. 173), "I was prepared myself, your Honor, but the counsel was not prepared. With proper counsel, I would have gladly been ready for trial. I myself was prepared. He was not prepared."

of counsel has further demerits. Without a doubt, the appellate courts of California and justices thereof are conscientious to a fault. On the other hand, to review a record in advance of briefs being filed by the appellant or appellee to determine whether there is sufficient error to merit the appointment of counsel, presupposes a judicial determination of the merits of the case where the request for appointment of counsel is denied. Thus, in the instant case, the District Court of Appeal, on January 7, 1960, filed its memorandum opinion in which it was indicated that the Court felt that the defendants themselves were responsible for their lack of counsel. Another application for counsel was denied on April 12, 1960. On May 17, 1960, the Appellant's Opening Brief was filed, and on September 8, 1960, the Respondent's Brief was filed. In effect, the District Court of Appeal had made its mind up that there had been no error with respect to the denial of the assistance of counsel, and their predetermination of that issue is apparent from a reading of the opinion wherein not one word of discussion regarding "conflict" can be found.

It is respectfully submitted that the right of a defendant to have counsel on appeal is a concomitant expression of the rule of the *Griffin* case that he has a right to a transcript of the record. As pointed out by Justice Shauer (Footnote 16, *supra*) when a defendant appeals, he is already presumably guilty. It is difficult enough for an appellate attorney to search a record to find reversible error where it is provided in California Constitution Article VI, Section 4½ that "no judgment shall be set aside, or new trial granted, in any case on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any errors to any matter of procedure, unless, after an examination of the entire cause, including the evidence,

the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice"; and to impose such a burden on a lay defendant is an unreasonable burden. It is just this type of unreasonable burden which appellant submits is prohibited in our constitutional form of government under the general heading of "due process of law" or "fair play".

Due process forbids a state court to deny an indigent defendant the right to counsel *after* he has been convicted where the presumption of innocence has shifted; he is more than ever in need of the protection of counsel. To hold otherwise would be the pejorative of the protections "implicit in the concept of order to liberty".

Palko v. Connecticut, 302 U.S. 319, 325.

Conclusion

There is no question, whatsoever that the petitioners had a conflict of interest before, at and after the time for trial. The Canons of legal ethics and constitutional mandate require the State to protect their right to have separate counsel and to a reasonable continuance in order that their counsel might have prepared for trial. The proceedings at the appellate level in the California courts were equally without validity, and the error of the trial court was compounded by the reviewing courts of the State of California.

The convictions and judgments, under the circumstances here, must be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 425

WILLIAM DOUGLAS and BENNIE WILL MEYES,
Petitioners,

v.s.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

On Writ of Certiorari to the Supreme Court of the
State of California.

RESPONDENT'S BRIEF.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.
No. 476

WILLIAM DOUGLAS and BENNIE WILL MEYES,
Petitioners,

v.s.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

On Writ of Certiorari to the Supreme Court of the
State of California.

RESPONDENT'S BRIEF.

Introduction.

Petitioners, Meyes and Douglas, were charged, tried and convicted of thirteen felonies which included robbery, assault with intent to commit murder, and assault with a deadly weapon. [Tr. of R. pp. 1-20.]

The only issues raised by petitioners herein center on matters arising before the actual taking of evidence commenced, or on matters relating to taking of their appeals. (Br. for Pet. pp. 5-21.)

The actual testimony of the prosecution witnesses concerning the felonies charged and of which petitioners were convicted is, for the most part, eyewitness testimony of the victims of said petitioners which includes cogent identifications of the petitioners as perpetrators of said crimes. [Tr. of R. pp. 104-151.]

Statement of the Case.

On August 18, 1959, the office of the Public Defender was appointed in open court by the trial judge to represent petitioners in the felony charges against them. Petitioners were arraigned. [Tr. of R. p. 9.]

On August 21, 1959, petitioners appeared in court with a Deputy Public Defender, and they each entered pleas of "Not Guilty". Petitioner Meyes additionally denied the three prior felony convictions charged against him. The case was set for trial on September 30, 1959. [Tr. of R. pp. 10-11.]

On September 30, 1959, the case was called for trial, and petitioners' counsel, Deputy Public Defender Atkins, was present. [Tr. of R. pp. 11-12.]

The first matter placed before the trial court by petitioners' counsel was a motion pursuant to California Code of Civil Procedure, Section 170.6 to dismiss the trial judge. [Tr. of R. pp. 28-30.]

The motion was denied due to the fact petitioners' counsel had not filed it in a timely manner. [Tr. of R. p. 28.]

The next motion urged on the trial court, was a motion for a continuance on the sole ground that counsel for petitioners had not completed his investigation of all of the prosecution witnesses, presented in the following manner:

"Mr. Atkins: We are not ready for trial for the reason that in view of the many counts involved—there are 13 counts—the defense is not ready because we have not been able to complete the investigation as to certain defenses which we are trying to develop as to these many dates. In other words, the investigation is not complete as to certain defenses which we are trying to develop.

The Court: It leaves me so vague I cannot get ahold of it.

Mr. Atkins: Let me be more explicit. There are many dates and alibis as to any of these dates would certainly help and aid the defense in the matter. There are so many that it is difficult to check each one and develop the people who might have known these men and who might for one reason or another be able to remember certain dates. For that reason we have not been able to complete the investigation, contact these people, and interrogate them, asking them their possible reasons for remembering certain dates. We have just not been able to complete that investigation, your Honor. [Tr. of R. p. 29.]

The trial court denied the motion for continuance.

"The Court: Yes. I do not believe that your reasons are sufficient, so the matter will be set for trial." [Tr. of R. p. 31.]

Then, for the first time, Mr. Atkins stated to the court that petitioner Douglas wanted his own counsel:

"Mr. Atkins: Your Honor, I would renew my motion for a continuance for the following reasons: First, Mr. Douglas feels that he would like to have an attorney of his own to represent him. He feels that there may be during this trial conflict which will arise in which case he would want an attorney of his own to be arguing and representing him alone apart from Meyes." [Tr. of R. p. 31.]

Mr. Atkins went on to advise the court of Meyes' conviction and Douglas' acquittal of a murder "which is tied up in this case." Mr. Atkins advised that the

problem, "arose only yesterday amongst other problems—". Mr. Atkins reiterated that "the investigation is not complete as to the defenses which these defendants would like to present." Mr. Atkins discussed the time lapse between the criminal acts charged and the date the trial was to commence. Then he said:

"... On my own part I feel that I am prepared."

[Tr. of R. pp. 31-32.]

Mr. Atkins said that he hadn't studied the transcripts of previous trials. [Tr. of R. p. 32.] Later, he changed this to mean that "he had not had the opportunity to cross-index" the transcripts. [Tr. of R. pp. 75, 156.]

The trial judge had cause to later observe that the prior murder trial transcripts "are very well marked with notations sticking out of the end of the transcripts." [Tr. of R. p. 165.]

The prosecutor, Mr. Carr, pointed out that there had been ample notice to the petitioners of what prosecution witnesses would be used; they merely had to look at the transcript of the earlier murder trials in which evidence of the instant robberies had been received to show motive for the killing of an arresting officer. [Tr. of R. pp. 32-33.]

At this time, Mr. Atkins brought up another reason for continuance:

"... Now, in addition, let me state this: Mr. Douglas states that his mother has a serious illness, that he does not feel mentally ready for trial in that he is worried about his mother and does not feel prepared for the trial. In other words, he does not feel prepared to defend himself now with all of the faculties which he possesses. I offer that as another reason." [Tr. of R. p. 34.]

The judge denied the continuance that had been urged on the grounds of an incomplete investigation and found that defendants had had plenty of time to formulate their alibis. [Tr. of R. p. 34.]

At this time, the trial judge asked for comments of counsel on the matter of conflict of interest. The prosecutor commented that in going over the prior murder trials of petitioners with respect to the evidence received in those trials of the instant felonies (to show motive), that petitioners "made a general and categorical denial as to any participation or knowledge of those robberies." The prosecutor commented that he did not recall "any conflict." [Tr. of R. p. 35.]

Mr. Atkins replied:

"What has happened since then? Well, something has happened since then, your Honor. Douglas was acquitted and Bennie Meyes was convicted. Now, I can defend both of them, but I am at a disadvantage in that if I defend both of them the stigma of the murder conviction as to Bennie Meyes—I have to talk out of one side of my mouth as to Bennie Meyes and out of the other side of my mouth as to Mr. Douglas.

The Court: I do not know why—

Mr. Atkins: I do not think that it is fair for Mr. Douglas. He should have an attorney who would represent him and him alone who can make the best use of the fact that an acquittal was earned on his behalf in the murder trial. That is a conflict. I submit to your Honor that that is a conflict in presenting the case which should be obvious to anyone that two lawyers are necessary." [Tr. of R. p. 36.]

The motion for appointment of another counsel for Douglas was denied. [Tr. of R. p. 36.]

After a short recess, Mr. Atkins represented to the court *for the very first time*, that Douglas had actually made arrangements with an attorney to defend him and again moved for a continuance. The trial court denied said motion. [Tr. of R. p. 36.]

The prospective jury panel was then sworn, and petitioner Meyes informed the court for the first time that he didn't want Mr. Atkins as his counsel on the sole ground that "he has not read these transcripts", and further that Mr. Atkins had only been up to talk to petitioners "twice". [Tr. of R. p. 37.]

Petitioner Meyes went on to inform the court that Mr. Atkins was representing him against Meyes' wishes and that petitioner Meyes had called in the F.B.I. to investigate the "fake and phony" charges of robbery against him. [Tr. of R. p. 38.]

At this time, petitioner Meyes commenced a running series of interruptions that continued throughout the proceedings. [Tr. of R. p. 39, *et seq.*]

Mr. Atkins approached the bench and advised the court that he was unable to conduct his case due to Meyes' behaviour. The prosecutor advised the court of the possible reason for Meyes' conduct. [Tr. of R. pp. 39-40.]

Once again, Mr. Atkins raised the issue of a possible conflict. [Tr. of R. p. 42.] Mr. Atkins conferred with petitioners and the proceedings resumed. Petitioner Meyes continued his interruptions and insisted Mr. Atkins was not "properly prepared." [Tr. of R. pp. 43-44.]

The matter of Mr. Atkins' preparation was again discussed. [Tr. of R. pp. 45-46.] At this time Douglas interrupted and informed the court that he had talked with an attorney *the prior day*, and the attorney had said he'd be back that day or the next day. (This, even though his attorney only a short time earlier had represented that said attorney would actually represent Douglas.) [Tr. of R. p. 46.] Meyes again charged that Mr. Atkins had only seen petitioners twice for "about ten or fifteen minutes." Mr. Atkins countered that the visits had been for "at least an hour or an hour and a half." [Tr. of R. p. 47.]

At this time, the proceedings commenced. Mr. Atkins successfully, and in a legally competent manner argued a motion to exclude witnesses during the trial, and his argument showed he was aware of testimony which would be "common" to all the witnesses. [Tr. of R. pp. 55-58.]

Mr. Atkins then proceeded to *voir dire* the jury in a most competent and prepared manner. [Tr. of R. pp. 59-70.]

After a period of *voir dire* and recess Mr. Atkins approached the bench and advised the trial judge that petitioners refused to go further with the trial and that "they still have not accepted me as their counsel and representing them in this trial." [Tr. of R. p. 72.]

Douglas advised the judge that "we stand on our right to dismiss counsel" Mr. Atkins advised Douglas that if they dismissed him they could be forced to proceed without counsel. [Tr. of R. pp. 72-73.] Meyes stated that this would be illegal. [Tr. of R. p. 73.]

At this stage of the proceeding, a running colloquy between Mr. Atkins, the deputy public defender, Meyes, Douglas, and the trial court commenced. The essence of this colloquy concerned the dismissal of Mr. Atkins as their counsel by both Meyes and Douglas. [Tr. of R. pp. 73-83.]

A recess was taken, and after said recess, Mr. Atkins advised the court he had "discussed the matter thoroughly" with both Meyes and Douglas. [Tr. of R. p. 74.] The court asked Douglas if he wished to dismiss counsel and Meyes answered that *he* did because Mr. Atkins was not properly prepared. The court advised Meyes that he was talking to Douglas, and Douglas stated, "It is my desire because he is not properly prepared to defend me and Mr. Meyes at the same time . . ." [Tr. of R. p. 74.]

The trial judge advised Douglas that he'd have to put on his own case and Douglas stated that he would have "nothing to say" after the prosecutor put on his case. [Tr. of R. pp. 74-75.]

Douglas stated he fully understood that he'd have the obligation of his defense if Mr. Atkins were dismissed, but he still wanted to dismiss him. [Tr. of R. p. 75.]

Meyes stated he wanted to dismiss Mr. Atkins also because Mr. Atkins "is not qualified," or "properly prepared to defend us . . ." Meyes said he desired "an attorney", but not Mr. Atkins. The judge advised Meyes he could not make a conditional dismissal of Mr. Atkins to secure another attorney. [Tr. of R. p. 75.]

At this time, Mr. Atkins advised the court, "*Now, I have prepared this case so that I could defend it now.*"

The only deficiency in his preparation, according to Mr. Atkins was failure to "cross index" the former trials of Meyes and Douglas, but that "I feel I would be able to do that as I go along, and it may not be to Mr. Meyes' satisfaction or Mr. Douglas' satisfaction, *but I would be able to do that and do it properly.*" [Emphasis added; Tr. of R. pp. 75-76.]

Mr. Atkins continued:

" . . . I have employed them, even though they do not want me, to let me continue the case because my conscience does not allow me to let these two boys go through a trial of this nature without an attorney." [Tr. of R. p. 76.]

Mr. Atkins advised the court that nonetheless the petitioners wanted to dismiss him. The trial judge observed that Douglas had dismissed Mr. Atkins without qualification but Meyes had not. Douglas then stated he didn't want Mr. Atkins but wanted to obtain other counsel. He stated ". . . I don't think Mr. Atkinson [Atkins] is prepared to defend me, and for that reason I would want to dismiss Mr. Atkinson." [Tr. of R. p. 76.]

The trial judge told Douglas he had to dismiss Atkins and proceed alone, or keep Atkins. Meyes then stated that Atkins was dismissed and that the "Court can go ahead and take advantage of us just like he has been." The trial judge ruled that without an unqualified dismissal of Mr. Atkins, they would proceed. [Tr. of R. pp. 76-77.]

Meyes and Douglas then stated they wanted to dismiss Mr. Atkins. Meyes stated, "Mr. Atkinson can't defend us . . ." Mr. Atkins stated that this was "not true." [Tr. of R. p. 77.]

A continued interchange between Meyes, Douglas and the trial judge included Meyes' comment "We want legal representation against this cruel Mr. Carr, but we don't want Mr. Atkinson at all." [Tr. of R. p. 78.]

Mr. Atkins asked the trial judge how he could defend petitioners with their attitude and lack of cooperation. At this time Mr. Atkins asked Meyes:

"Mr. Atkins: Well, now, suppose that this case were continued until Monday and I had that much time to prepare, would you still desire to have me relieved as your counsel?"

Defendant Meyes: Yes.

Mr. Atkins: Mr. Douglas?

Defendant Douglas: Well, if we could get private counsel for each of us, which would be proper, and get a week, I would go for it.

Mr. Atkins: Go for what?

Defendant Douglas: For to keep you as counsel. We can get a delay of a week and a counsel for myself.

Defendant Meyes: You are speaking for me now. Don't speak for me.

Defendant Douglas: Well, I said for myself, counsel for myself." [Tr. of R. pp. 78-79:]

The prosecutor stated that it appeared "this is a plan conceived by the defendants for the purpose of delaying tactics insofar as this case is concerned." He went on to observe:

"Mr. Carr: Just a moment, please. They are not satisfied with this lawyer, not satisfied with anything. They are merely satisfied with making a lot of accusations, if your Honor please, against counsel that represents them.

I understand that Mr. Atkins for a number of years was in the United States Attorney's office. He is well thought of in the public defender's office as one of their able defenders. It would not make any difference to these defendants, in my humble opinion, whether it was Grant Cooper or Jerry Giesler or a number of other leading lawyers here in Southern California and those around the San Francisco Bay area. If all of them represented them, they would still indulge in those delaying tactics." [Tr. of R. p. 79.]

Douglas stated that Mr. Atkins had not "had enough time to properly give me a proper defense" and that he "couldn't use him". Meyes stated, "I can't use him under any circumstances." [Tr. of R. p. 80.]

Both petitioners agreed that they did not want Atkins "under any circumstances." [Tr. of R. p. 80.]

The prosecutor suggested Mr. Atkins be retained to advise the petitioners in an advisory situation. Mr. Atkins stated:

"Your Honor: I oppose that motion, and I do so for this reason. If these defendants want an attorney to represent them, *I am here qualified and ready to try their case for them.* I do not want to be placed in the position of sitting in a trial that I cannot determine what will happen and cannot guide the trial toward the end that I believe it should be guided toward. . . ." [Emphasis added; Tr. of R. p. 81.]

The trial judge declined to retain Mr. Atkins in an advisory capacity and at petitioners' request he was dismissed, and the trial commenced. [Tr. of R. p. 82.]

ARGUMENT.

I.

Refusal to Appoint a Separate Counsel for Petitioner Douglas Was Not a Denial of Due Process of Law.

At the outset, it should be noted that respondent has set out a lengthy statement of the occurrences surrounding the request for separate counsel by Douglas and the ultimate dismissal of Mr. Atkins by both petitioners. (Pet. Br. pp. 6-9.)

It is submitted that the same matter as set out by petitioners fail, in their brevity, to disclose the total judicial picture confronting the trial judge when he was faced with the various demands of said petitioners.

For instance, counsel for petitioners sets out that Douglas had mentioned the name of a counsel, Leo Brennan, to his then appointed counsel, Mr. Atkins, who in turn told the court that Douglas had made arrangements for this Brennan to represent him. (Pet. Br. p. 9.) Counsel fails to mention that the *first* mention of Brennan was after a recess the morning of trial [Tr. of R. p. 36], and further that, Douglas later let it be known that he was in the first stages of negotiating with Brennan instead of having an actual arrangement with Brennan for representation. [Tr. of R. p. 46.]

It is submitted that a careful consideration of all that transpired on the morning of September 30, 1959 [Tr. of R. pp. 28-83] as set out above, allows one to conclude that in many ways, petitioners themselves were the sole architects of the trial structure which found them standing mute and without counsel during the damning testimony that followed their dismissal of counsel, while

a consideration of the brief by petitioners' counsel alone leaves one with the impression that a legal steam engine ran over two meek and ignorant indigents.

It is conceded that the subject of a possible conflict of interests between Meyes and Douglas came up at the time of trial. However, while said conflict was called to the attention of the trial judge, it was done so, only after petitioners sought to peremptorily challenge the judge, failed in that; next moved for a continuance on the grounds of an incomplete investigation by the defense of possible alibi witnesses, and had that motion denied. [Tr. of R. pp. 28 29.]

The shocked and indignant feeling of petitioners' counsel herein (Pet. Br. pp. 7-8) was apparently not felt by the trial counsel appointed to represent Meyes and Douglas. It would seem only logical that if the conflict of interests between these two petitioners were of great substance that it would have been brought forth immediately upon the convening of court, rather than as step three in the apparent plan to stall the day's proceedings which had been scheduled for that date (September 30, 1959) since August 18, 1959.

There is no argument that the public defender was not properly appointed to represent both petitioners initially on August 18, 1959, under California law. [Tr. of R. p. 9.]

In re Hough, 24 Cal. 2d 522, 528;

Cal. Gov. Code, §27706(a).

There is also no doubt in California that the Office of the Public Defender is staffed with outstanding legal talent:

"This court can take judicial notice, too, that it would be difficult to find in California any lawyers more experienced or better qualified in defending criminal cases than the public defender of Los Angeles County and his staff."

People v. Adamson, 34 Cal. 2d 320, 333, 210 P. 2d 13, 19.

See:

Stroble v. California, 343 U. S. 181, 196, 72 S. Ct. 599, 607, 96 L. Ed. 872.

It is submitted that the instant record fully supports the conclusion that Mr. Atkins was a highly articulate and competent attorney. [Tr. of R. pp. 28-83.]

The false charges against Mr. Atkins by both petitioners with respect to preparation for trial and amount of contact with petitioners by Mr. Atkins, and the various contradictory statements by petitioners undoubtedly led the District Court of Appeal to dismiss the separate counsel contention by stating:

" . . . As the People suggest, the record clearly shows defendants were attempting improperly to delay the proceedings by a last-minute dismissal of the public defender." [Tr. of R. p. 186.]

Meyes constantly referred to Mr. Atkins' lack of preparation even though Mr. Atkins had stated, "On my own part I feel that I am prepared." [Tr. of R. p. 32] and "I have prepared this case so that I could defend it now" [Tr. of R. p. 75] and "I am here qualified and ready to try their case for them." [Tr. of R. p. 81.]

Meyes and Douglas ultimately stated that under no circumstances did they want Mr. Atkins to represent

them. [Tr. of R. p. 80.] They stated, in essence, that they didn't want Mr. Atkins even if he was prepared. [Tr. of R. pp. 78-79.]

Respondent does not mean to imply that if there is a valid legal ground for appointment of separate counsel for two different defendants, such legal ground is neutralized because the two defendants happen to be insolent, as in this case. And yet, the trial judge must make a ruling on a motion for separate counsel based on the facts presented to him, and where, as here, said motion is presented in such an aura of bad faith and contradictions by two indigent, but not legally ignorant defendants through their court-appointed counsel to whom they have given only insults in place of cooperation, and without any real showing of what their conflict of interests was, a negative ruling is understandable.

Counsel for petitioners contends that the ruling by the trial judge in the instant case conflicts with the federal rule enunciated in *Glasser v. United States*, 315 U. S. 60, 62 S. Ct. 457; 80 L. Ed. 680 and the California cases of *People v. Kerfoot*, 184 Cal. App. 2d 622, 7 Cal. Rptr. 674; *People v. Robinson*, 42 Cal. 2d 741, 269 P. 2d 6; and *People v. Lanigan*, 22 Cal. 2d 569, 140 P. 2d 24.

However, in the *Glasser* case, *supra* (62 S. Ct. 457), it is submitted that defendant Glasser had retained an attorney, one Stewart, for himself. Against Glasser's wishes, the federal trial judge appointed Stewart to also represent codefendant Kretske. This Honorable Court set out at pages 465-467, several examples of how Stewart was hampered in his dual counsel role. These examples turned mainly on the fact that Kretske's role

in the alleged crime was different and apart from the role of Glasser and Stewart showed that he was reluctant to cross-examine some prosecution witnesses at the expense of one or another of his two clients.

However, in the instant case, the indigent petitioners had the deputy public defender appointed to represent both of them at the outset of the case without any objection until approximately a month and one half after the appointment when the trial was to commence. Further, in the instant case, the evidence discloses that both petitioners were joint and equal participants in the crimes charged as shown by testimony of witnesses who had been victimized by the petitioners. Their testimony was brief, cogent and contained telling and damning identifications of the two petitioners as participants in the crimes charged. [Tr. of R. pp. 104-151.]

One lower federal court has since interpreted *Glasser v. United States*, *supra* (62 S. Ct. 457), as requiring a showing that "the representation of codefendants, by the same counsel resulted in . . . embarrassment to the attorney and prejudice to his clients." *Farris v. Hunter* (Circuit Ct. of Appeals, Tenth Circ.), 144 F. 2d 63, 65.

It has also been emphasized that in *Glasser v. United States*, *supra*, that this Honorable Court ". . . surveyed the entire record and found there *persuasive evidence* that the appointment of Stewart as counsel for the alleged co-conspirator had in fact embarrassed and inhibited Stewart's conduct of Glasser's defense. It pointed to *numerous and critical* instances in which Stewart found himself unable faithfully to serve two

masters. We see no resemblance between the situation found to obtain in that case and that developed here."

(Emphasis added.)

Swope v. McDonald (U. S. Ct. of Apps., Ninth Circuit), 173 F. 2d 852, 856, certiorari denied 337 U. S. 900, 69 S. Ct. 1522, 93 L. Ed. 1759.

It would appear that petitioners, under the federal rules alone, should be required to take the instant record and demonstrate wherein Mr. Atkins would have been at any substantial disadvantage in conducting their case during the actual trial on the merits. Respondent will discuss absence of any conflict in detail, *infra*, after a consideration of California cases cited by counsel for petitioners.

See also:

Sanders v. United States, 183 F. 2d 748, certiorari denied 340 U. S. 921, 71 S. Ct. 352, 95 L. Ed. 605.

In *People v. Lanigan, supra* (22 Cal. 2d 509), two defendants were charged with robbery. They had separate counsel, and after a first trial, Lanigan's counsel withdrew. Lanigan asked for a continuance until he could secure separate counsel. The trial judge, however, appointed the counsel for Lanigan's co-defendant to represent Lanigan over the objections of said counsel and Lanigan. It was at this time that Lanigan was first aware he would be without counsel unless he was allowed another counsel and time to confer with him. (In the instant case, it is to be recalled that petitioners

had had the public defender appointed to represent both of them at a date approximately a month and one half prior to trial, and then for the first time at trial, after two unsuccessful dilatory motions, they brought up the conflict of interests issue.

In *People v. Robinson, supra* (42 Cal. 2d 741), the California Supreme Court announced at pages 747-748, that it was "not necessary for Robinson to show that he had some diversity of interest from Pratt (e.g., that he might have wished to attempt to strengthen his own case by casting blame for the crimes upon Pratt); entirely apart from any factually apparent diversity of interests. Robinson was entitled to the undivided loyalty and untrammelled assistance of his own counsel. . . ." (Emphasis added.)

At this point, it is undoubtedly wondered why a court which voices the above sentiments, would refuse a hearing in the instant case. [Tr. of R. p. 194.] However, factually, the California Supreme Court had found at page 748 of the *Robinson* case, *supra*, that:

" . . . Robinson, at the time Mr. Coviello advised him two weeks or 10 days before the date set for trial that 'it would be wise for him to get another attorney so there would be no question of diversity of interests here,' was confined in the county jail and his opportunities to communicate with other attorneys were limited. According to his statement he 'was required, under the rules of the county jail, to seek new counsel by mail . . . It is a slow process . . . He did make some attempts to obtain other counsel; it does not appear that he knew of the availability of the public defender or that he personally had opportunity to bring the matter

to the attention of the trial judge until the case was called for trial. In the circumstances it does not appear that any dilatoriness chargeable to him was of sufficient substance to warrant the grave consequence of being required to go to trial without further opportunity to secure counsel of his choice."

But in the instant case, both petitioners had appeared on the same date, in the same court and had the public defender appointed to represent both of them. [Tr. of R. p. 9.] And then, three days later, both petitioners were back in court, represented by said public defender, and nothing was raised concerning a separate counsel. And it should also be noted that Meyes had been represented in his earlier murder trial by the Public Defender's Office although Douglas had private counsel. (Br. of Pet. p. 6.) No mention of separate counsel for Douglas was made until the opening day of trial after two other preliminary motions failed. These factors undoubtedly, motivated the California Supreme Court in their refusal to apply the principles of the *Robinson* and *Lanigan* cases, *supra*, to the instant case.

Counsel for petitioners relies almost exclusively in his argument on the instant point, on the case of *People v. Kerfoot, supra* (184 Cal. App. 2d 622). In this case, the California Supreme Court had refused to grant a hearing to review the Second District Court of Appeals (Division One) decision on November 9, 1960. (The California Supreme Court refused to hear the instant case on February 21, 1961 [Tr. of R. p. 194], showing that said court was well aware of the decision in *People v. Kerfoot, supra*.)

➤ In the *Kerfoot* case, *supra* (184 Cal. App. 2d 622), both defendants (in a murder case where the prosecu-

tion was seeking the death penalty) had undergone a first trial with separate and appointed private practicing counsel. Separate counsel had been appointed because a conflict of interests had been alleged. The jury failed to agree on a verdict. The matter was reset for a second trial and at a special hearing both counsel moved to be relieved as counsel due to the length of the first trial, and said motion was granted. Ultimately the public defender was appointed to represent both defendants in a second trial after the trial judge had found that there was "no conflict of interest between the defendants and that one attorney could represent both defendants." At page 627 of the *Kerfoot* decision, *supra* (184 Cal. App. 2d 622), it appears that at a motion for continuance heard fourteen days before the scheduled retrial date, the deputy public defender assigned to the case advised the court he had (1) *not received* copies of the former trial transcript and (2) that out-of-state-witnesses were needed. The deputy public defender then announced that the two defendants wanted to discharge him which said defendants proceeded to do with the trial court's approval.

Fourteen days later the cause was called for trial and it was found that one defendant had never received the transcript of the prior trial. The deputy public defender, who was in court that morning on another matter, offered to represent either one or both of the defendants if he could have more time to prepare. The attorney told the court of a possible conflict of interests and the difficulty that could arise at a later penalty hearing to determine whether both the defendants would suffer life imprisonment or the death penalty.

should they first be found guilty of first degree murder.

The judge indicated he might later appoint separate counsel if both defendants were found guilty of first degree murder. Both defendants refused the public defender in spite of the trial court's urging them to accept him. The judge found there would be no conflict and the trial proceeded. A jury found both defendants guilty of first degree murder. A penalty hearing before the same jury resulted in a sentence of life imprisonment as to both defendants.

It should first be noted that at page 635 (184 Cal. App. 2d 622), the reviewing court found that the trial court erred in discharging codefendant Demes' first trial counsel without proper notice, concluding that the defendant would not have consented to the withdrawal of his earlier counsel if he knew the trial judge would proceed later as he did. The court found that the consequences of dismissing his counsel had not been fully explained to Demes. As to the conflict in interests and necessity to appoint separate counsel for Kerfoot and Demes, the court found at page 637 (184 Cal. App. 2d 622):

" . . . As between the defendants the evidence was as varying as it could possibly be—Kerfoot was positively identified by at least two eyewitnesses as being the killer of Browse. No one testified that he saw appellant Demes at the scene of the robbery and the murder. Kerfoot was seen with a gun—the appellant was not seen with a gun. In the Las Vegas robbery one defendant (Kerfoot) apparently acted as the leader and the other, the appellant (Demes), apparently dis-

couraged such a course of conduct. The judge, however, made it plain that he would consider nothing other than the testimony which was introduced in the first trial. He refused to weigh the innumerable intangible factors which exist in practically every case such as this." (Emphasis added.)

The court further observed at page 643 (184 Cal. App. 2d 622) in quoting a cited case

"... The more serious the offense of which he is accused, the more carefully will the safeguards of the law be thrown around him. It will not do in any case to say that the accused is plainly guilty of an atrocious murder and so the means used to convict is justified by the end to be attained."

The court also observed at pages 644-645:

"It is true that if no adverse interest exists and none is claimed, the representation of more than one defendant by a single attorney is permissible. (Sanders v. United States, 183 F. 2d 748; Setser v. Welch 159 F. 2d 703; Farris v. Hunter, 144 F. 2d 63; United States v. Rollnick, 91 F. 2d 911; Collinsworth v. Mayo, 85 F. Supp. 207.)"

At pages 645-646, the court commented with concern about the fact that the trial judge was prepared to give a continuance to defendants if they would accept the public defender, to enable him to go over the prior trial transcripts recently received, and yet denied a continuance to enable appellants to read the transcripts.

It is respectfully submitted that in the instant case, as pointed out repeatedly, *supra*, the petitioners did

not have their lawyer dismissed on little or no notice, they dismissed him approximately a month and one half after having had him appointed.

Further, there is no conflict of interests between the petitioners in the instant case, such as the one set out at length in the *Kerfoot* case, *supra*. In the instant case, the evidence is made up of testimony of eyewitness victims of the two petitioners. Their testimony shows that the alleged crimes all fell into the same pattern and in the same geographical area. Except for names, dates, and locations, each of the witnesses' testimony in the instant case bears a marked similarity due to petitioners' *modus operandi*, and is highlighted by clear identifications of both petitioners as perpetrators of the crimes. [Tr. of R. pp. 104-151.]

Since the contention by petitioners that there was a conflict in their interests at the trial of the instant case is predicated largely on the fact that they had both been tried earlier for the killing of a police officer who was attempting to arrest them for the instant robberies (Br. for Pet. p. 6; *People v. Meyes*, 198 A. C. A. 512), it is helpful to review portions of that murder case opinion.

"Testimony, likewise limited only to the issue of motive, was received concerning certain robberies. The first was a robbery of participants in a poker game on June 9, 1958. A witness identified Meyes as having participated therein and having been armed with a drawn pistol. Other witnesses testified to a robbery which occurred July 21, 1958. Three men participated in the robbery, and two were identified as being defendants Meyes and Douglas. Meyes was armed with a gun and

during the course of the robbery struck one of the men across the head with the gun. Other witnesses testified to the holdup of a 'crap game' on July 25, 1958. Witnesses testified that Meyes participated and was armed at that time. There was no definite identification of Douglas. In this robbery one of the victims was shot through the chest. A shoeshine stand operator testified to a robbery on August 16, 1958, by two armed men. He identified Meyes and Douglas. Another witness testified that Meyes and Douglas were two of the three men who held up a crap game on October 10, 1958.

"Defendant Meyes testified in his own behalf. . . . He denied being involved in any robberies after his parole from state prison in June of 1957. . . ." *People v. Meyes, supra* (198 A. C. A. 512, 518).

Since Douglas was acquitted on the murder charge, the decision fails to catalog his testimony with respect to the robberies but we can assume he denied committing them, and in fact this is attested to by comments of the prosecutor in the instant case. [Tr. of R. p. 35.]

It appears that the summary of the witnesses' testimony in the murder case, *supra*, with respect to the instant crimes (to show motive for the killing) follows, in essence, the testimony actually given in the instant case [Tr. of R. pp. 104-151], otherwise the People's witnesses would have been guilty of perjury. Although the petitioners dismissed their counsel in the instant case and stood mute, it follows that their own testimony would have to be tied down to the same testi-

mony they gave at the murder trial with respect to the instant crimes, or petitioners likewise would be guilty of perjury.

No true conflict of interests between petitioners was even demonstrated to the trial court (and counsel for petitioners has certainly not spelled one out in his brief before this Honorable Court).

Lastly, the instant case is not a capital case.

These are undoubtedly the considerations that caused the California Supreme Court to distinguish the instant case from *People v. Kerfoot*, *supra* (184 Cal. App. 2d 622), and deny a hearing on February 21, 1961. [Tr. of R. p. 194.]

Returning our attention to the federal rule enunciated in *Glasser v. United States*, *supra* (315 U. S. 60, 62 S. Ct. 457, 86 L. Ed. 680), we find that the rationale for requiring a separate appointment of counsel for Kretzke instead of the procedure of appointing Glasser's counsel to represent both Kretzke and Glasser, rests on the Sixth Amendment which gives an accused in a criminal proceeding in a federal court the right "to have the Assistance of Counsel for his defence". (62 S. Ct. 457, 464.)

"The Sixth Amendment of the national Constitution applies only to trials in federal courts. The due process clause of the Fourteenth Amendment does not incorporate, as such, the specific guarantees found in the Sixth Amendment although a denial by a state of rights or privileges specifically embodied in that and others of the first eight amendments may, in certain circumstances, or in connection with other elements, operate in a

given case, to deprive a litigant of due process of law in violation of the Fourteenth. . . .”

Betts v. Brady. 316 U. S. 455, 461-462, 62 S. Ct. 1252, 1256, 86 L. Ed. 1595.

What offenses triable in a state court require appointment of counsel as a matter of due process?

“ . . . [W]hen a crime subject to capital punishment is not involved, each case depends on its own facts. (Case cited.) Where the gravity of the crime and other factors—such as the age and education of the defendant, the conduct of the court or the prosecuting officials, and the complicated nature of the offense charged and the possible defenses thereto—render criminal proceedings without counsel so apt to result in injustice as to be fundamentally unfair, . . . the accused must have legal assistance under the Amendment whether he pleads guilty or elects to stand trial, whether he requests counsel or not. Only a waiver of counsel, understandingly made, justifies trial without counsel.”

Uveges v. Pennsylvania, 335 U. S. 437, 440-441, 69 S. Ct. 184, 186, 93 L. Ed. 127.

The above principles enunciated by this Honorable Court, although dealing with the matter of right to counsel alone (as opposed to right to separate counsel), are nonetheless, peculiarly applicable to the instant case.

California provides for appointment of counsel for indigents in both capital and noncapital offenses.

Cal. Penal Code, §987.

Further, it is provided that where the “public defender has properly refused to represent the person

accused" another counsel may be assigned and receive reasonable compensation.

Cal. Penal Code, §987a.

In the instant case; we have seen that the public defender was, in fact, appointed to represent petitioners. [Tr. of R. p. 10.]

Therefore, the only right really involved in the instant case, is not petitioner Douglas' right to counsel, but his right to *separate* counsel, and analogizing to the right to counsel cases above, we see that Douglas' right is predicated on the question of whether or not denial of said right deprived Douglas of due process.

It is respectfully submitted that based on the propositions argued above and all of the facts of the instant case, the court did not deny petitioner Douglas due process of law as guaranteed by the Fourteenth Amendment of the U. S. Constitution, by refusing to appoint him a separate counsel.

Also, it is noted that counsel for petitioners has not alleged that Meyes was deprived of due process in any way at the trial, and for good reason. Even if this Honorable Court should feel that denial of separate counsel to Douglas was a deprivation of due process as to Douglas, such deprivation could not inure to Meyes' benefit. After all, Douglas discharged Mr. Atkins [Tr. of R. pp. 75, 81] thus leaving him free to operate as Meyes' attorney. In spite of Douglas' dismissal, Meyes made it clear he still didn't want Mr. Atkins. [Tr. of R. p. 79.] Representative of Meyes' attitude was his statement that he ~~couldn't~~ want Mr. Atkins "under any circumstances." [Tr. of R. p. 80.] Even though Meyes had said he felt that Mr. Atkins

wasn't properly prepared the facts further show that when Mr. Atkins asked Meyes if he'd accept him as counsel with more preparation, Meyes said he wouldn't want Mr. Atkins as his counsel. [Tr. of R. p. 78.]

However, the record supports the trial judge's conclusion that Mr. Atkins was then prepared. [Tr. of R. pp. 32, 75, 81.]

It is a somewhat interesting commentary on the overall performance of petitioners in resisting the representation of the Public Defender's Office at the trial that after they were convicted on all counts charged, and the proverbial chips were placed before them in the form of sentences to be imposed, both petitioners requested representation of counsel at the sentence hearing. More particularly, both petitioners requested to be represented by the Public Defender! [Tr. of R. pp. 171, 175.]

It is again submitted that both petitioners were properly tried under all of the circumstances and without deprivation of due process. However, if the court feels Douglas was entitled to a separate appointment of counsel, then Meyes' conviction should be affirmed as were the convictions of Kretske and Roth in *Glasser v. United States, supra* (315 U. S. 60, 62 S. Ct. 457, 86 L. Ed. 680).

II.

Petitioner Douglas Was Not Denied Due Process With Respect to His Failure to Obtain a Separate Copy of the Trial Record, and Both Petitioners Were Not Deprived of Due Process of Law When the California District Court of Appeal Refused to Appoint Them Counsel on Appeal After Said Court Made an Independent Investigation.

A. Transcript on Appeal.

Counsel for petitioners first contends that petitioner Douglas was denied his constitutional right to a record on appeal. (Br. of Pet. pp. 13-14.)

It is a fact that both Meyes and Douglas separately requested transcripts of the trial in the instant case. [Tr. of R. pp. 24-27.] The record shows that the trial record of the instant case was filed with the reviewing court on January 6, 1960. [Tr. of R. p. 182.] A "Petition (mandate) for order *re* transcript" was denied on March 25, 1960. [Tr. of R. p. 182.]

As part of the appellate proceedings, a document entitled "Appellant's Opening Brief on Appeal" was filed on May 17, 1960. In the lower right hand corner of said document appeared the names of both petitioners as follows:

P. O. A-55779

BENNIE WILL MEYES

&

WILLIAM DOUGLAS

P. O. A-55779

Represa, California

In Propria Persona

For Appellants"

The internal structure of said document supported the conclusion that said document was presented on behalf of both petitioners as an appeal from their convictions. After respondent herein filed a "Respondent's Brief" on September 8, 1960, Meyes filed a document on September 28, 1960 entitled "Appellant's Reply Brief". This document contained only Meyes' name and prison address. [Tr. of R. p. 182.] In the "Appellant's Reply Brief", the matter of the transcript being in Meyes' sole possession, is brought up for the first time and Meyes states that the "Appellant's Opening Brief" is to be treated as his alone, in spite of the fact that said opening brief purported to cover both petitioners in all respects.

After this attitude concerning separate appeals was communicated to the appeals court, Douglas was notified on October 20, 1960 that he had to file his opening brief or his appeal would be dismissed. [Tr. of R. p. 182.]

On November 9, 1960 a letter from Douglas was filed in which he refused to adopt the brief filed by Meyes. [Tr. of R. p. 182.]

It is conceded that when the trial transcript was filed in the District Court of Appeal on January 6, 1960, that Meyes was in San Quentin prison and Douglas was in Folsom prison located 119 miles from San Quentin. (Br. for Pet. p. 4.) It is further acknowledged that the District Court of Appeal later held that Douglas had adopted the briefs filed by Meyes in spite of Douglas' letter. [Tr. of R. pp. 182, 192.]

Counsel for petitioners relies on the case of *Griffin v. Illinois*, 351 U. S. 12, 160 L. Ed. 891, 76 S. Ct. as authority for the proposition that Douglas was denied

due process in not receiving a separate copy of the transcript apart from the copy received by Meyes and the one lodged with the District Court of Appeals. (Br. for Pet. pp. 13-14.)

California provides that a defendant appealing from a superior court judgment of conviction for a felony is entitled to the reporter's transcript of the evidence at the expense of the state.

People v. Smith, 34 Cal. 2d 449, 211 P. 2d 561;

In re Paiva, 31 Cal. 2d 503, 190 P. 2d 604;

Hidalgo v. Municipal Court, 129 Cal. App. 2d 244, 277 P. 2d 36.

As stated above, the appellate court and Meyes received copies of the trial transcript on or about January 6, 1960. [Tr. of R. p. 182.] Four months later, Meyes filed a brief which purported to represent both petitioners' causes. Some ten months after the original filing of the trial record, Douglas, notified the court that he did not want Meyes' brief to cover his own cause. [Tr. of R. p. 182.] If Douglas wanted the transcript of the trial, it is submitted that these two petitioners were incarcerated within 119 miles of each other, and their demonstrated ability to communicate intelligently in the trial court is the antithesis to their apparent inability to communicate with each other over the exchange of the rather short trial transcript.

This Honorable Court stated at page 899 in *Griffin v. Illinois* (100 L. Ed. 891):

"... We do not hold, however, that Illinois must purchase a stenographer's transcript in every case where a defendant cannot buy it."

In the instant case, as in all appellate cases, California does purchase a transcript for the defendant, *supra*, as they did in the instant case, sending it to Meyes. Since defendant Douglas could easily have arranged for an exchange of the transcript in the several months that followed its filing, can it be said Douglas was denied due process?

Even more important, it would be an act without substance for this Honorable Court to hold that due process was not afforded Douglas due to the refusal of the state to supply him with a transcript in addition to the one Meyes had, for the following reasons:

1. Meyes filed an opening brief that covered all of the possible legal errors, except the matter of Douglas' possible right to separate counsel, which matter was raised on appeal by this respondent.

2. The state appellate court had a copy of the trial transcript before it when the matter came on for adjudication.

3. Apparently counsel for petitioners herein was satisfied that all the legal grounds for reversal available to Douglas were raised at the state level, because he has raised no new points before this Honorable Court concerning Douglas' trial.

4. This Honorable Court has the trial transcript before it now.

None of these propositions were true in *Griffin v. Illinois, supra*, where this court, due to lack of any record at all, had to "assume for purposes of this decision that errors were committed in the trial which would merit reversal, but that the petitioners could not

get appellate review of those errors solely because they were too poor to buy a stenographic transcript." (100 L. Ed. 891, 897.)

B. Counsel on Appeal.

Both petitioners requested counsel for purposes of their appeals, and their requests were denied. [Tr. of R. p. 182.] Counsel for petitioners contends that as a matter of due process, they were entitled to counsel on appeal. (Br. for Pet. pp. 14-21.)

As counsel for petitioners acknowledges at page 15 in his brief, California has judicially declared that:

"It is our opinion that appellate courts, upon application of an indigent defendant who has been convicted of a crime, should either (1) appoint an attorney to represent him on appeal or (2) make an independent investigation of the record and determine whether it would be of advantage to the defendant or helpful to the appellate court to have counsel appointed. This investigation should be made solely by the justices of the appellate courts. After such investigation, appellate courts should appoint counsel if in their opinion it would be helpful to the defendant or the court, and should deny the appointment of counsel only if in their judgment such appointment would be of no value to either the defendant or the court." *People v. Hyde*, 51 Cal. 2d 152, 154, 331 P. 2d 42.

The California court that reviewed the instant case (Second District Court of Appeal, Division Three) has held:

"Appointment of counsel to represent indigent appellants is not a matter of right as a part of

due process. It is discretionary with the court whether counsel should be appointed and a request for appointment should be denied if it clearly appears from the record that the appeal or other matter before the court is devoid of merit. (Other states and federal case cited as authority.) There is no statutory enactment which requires that counsel be appointed. Whenever the record discloses a question of error in the trial or other proceeding which counsel could in good conscience urge in behalf of the client an appointment has been made. Where counsel have not been appointed, the court has made an independent study of the record. We have done so in the present case." *People v. Logan*, 137 Cal. App. 2d 331, 332-333, 290 P. 2d 11.

As counsel for petitioners acknowledges, the District Courts of Appeal have consistently followed the procedure laid down by the California Supreme Court in *People v. Hyde*, *supra* (51 Cal. 2d 152, 154, 331 P. 2d 42). (Br. for Pet. p. 17.)

People v. Gillette, 171 Cal. App. 2d 497, 507, 341 P. 2d 398;

People v. Williams, 172 Cal. App. 2d 345, 348, 341 P. 2d 741;

People v. Lenaberry, 176 Cal. App. 2d 588, 589, 1 Cal. Rptr. 757.

In the instant case, with respect to petitioners' request for counsel, the Presiding Justice of the District Court of Appeal had issued a Memorandum on January 7, 1960, agreed to by a unanimous court, which was quoted by way of footnote in that court's Opinion. Said memorandum stated:

"I think the request should be denied. The defendants were convicted in a jury trial of 12 felonies, 10 of them being robbery of the first degree, one assault with attempt to commit murder and one assault with a deadly weapon. On the basis of the former convictions Meyes was found to be an habitual criminal. I have gone through the reporter's transcript. The witnesses for the People described each offense and identified the defendants as the perpetrators. The defendants did not testify.

"They were arraigned August 18, 1959. The Public Defender was appointed as counsel for each defendant. They pleaded not guilty August 21 and their trial was set for September 30. At the inception of the trial the defendants against the advice and even remonstrance of the court, refused to be represented by the Public Defender and asked for appointment of counsel of their own choice. The Deputy Public Defender sought a continuance to give him more time to prepare the case or have defendants find other counsel but the continuance was denied. The Deputy Public Defender tried in every way to assist the defendants but they 'heckled' him and threatened to continue to heckle him in his efforts to represent them. Finally they discharged him. In addressing the court the defendants were obstreperous and insolent. They refused to cross-examine witnesses or to produce any witnesses of their own. At no time was any representation made to the court by either defendant except by general statements that if they were represented by attorneys they could prove that the charges were a frame-up of the People's witnesses,

whom they described as a bunch of gamblers, and the police.

"The evidence of guilt was conclusive. The defendants would have had competent representation by the Deputy Public Defender. It is apparent to me that no good whatever could be served by appointment of counsel." [Tr. of R. pp. 192-193.]

It is submitted that the above quoted memorandum certainly supports the conclusion that the Court investigated the trial record fully and carefully.

It is conceded that Justice Traynor of the California Supreme Court feels that the principles laid down by his court in *People v. Hyde, supra* (51 Cal. 2d 152, 331 P. 2d 42), "should be expanded to require the appointment of counsel on appeal for all indigent defendants convicted of felonies."

People v. Brown, 55 Cal. 2d 64, 69, 9 Cal. Rptr. 836.

To Justice Traynor's observations in support of his opinion, *supra*, it is of interest to note what Justice Schauer observed in his separate concurring opinion at page 77 (55 Cal. 2d 64):

"From what has been quoted above from the opinions of the majority and of Justice Traynor it appears proper to infer that the granting of a hearing in the case at bench was influenced at least in part by the view of the specially concurring justice. If such inference is properly drawn it seems obviously appropriate to observe that although counsel appointed by this court performed his duties faithfully and ably, the appointment of an attorney for the defendant has not aided such defendant or furthered the proper administration

of justice. The only thing which the granting of a hearing accomplished has been a delay in final determination of this case and additional expense to the state."

To further elaborate on the thesis that the appellate practice in this state with respect to appointment of or refusal to appoint counsel, is in harmony with "the proper administration of justice" and due process, Justice Schauer has stated:

"I recognize that on appeal the defendant is no longer presumed to be innocent. To the contrary, his guilt has been established and every presumption is in favor of the regularity of the proceedings in the trial court. I think, too, that those able justices of the District Court of Appeal who voluntarily undertake the added burden of independently researching the record for possible flaws in the judicial process as it has been applied to indigents, are to be commended for their devotion to the public interest. This devotion is so broad in scope that these justices give the skill and acumen of their seasoned experience to protecting the rights of the indigents, and at the same time to making unnecessary the expenditure of public funds which would ensue from the appointment of counsel, in cases wherein a paid attorney could accomplish nothing which would benefit the defendant, the state or the cause of justice. Those members of the Bar who (literally as *amici curiae*) likewise unselfishly aid the district courts in this work, are similarly to be commended.

"It bears emphasis that the duty assumed by the justices and the volunteer lawyers, is an exacting and onerous one. Under the majority de-

cision in *People v. Hyde* (1958), 51 Cal. 2d 152, 154 [1] [331 P. 2d 42], it is, as I understand the opinion, the unspelled out but implied duty of the reviewing court (in cases wherein an indigent requests and is refused counsel) to examine the entire record (augmenting it if appropriate) to the end of reaching and manifesting a fully informed and confident conclusion that there has been neither a denial of due process nor error which is prejudicial within the compass of *People v. Watson* (1956), 46 Cal. 2d 818, 835-836 [12] [299 P. 2d 243]. Only when the record shows such exacting care is it immediately apparent to subsequently petitioned reviewing courts that the quality of justice on appeal for the indigent is of the same standard as for the opulent." (Concurring and dissenting opinion.)

People v. Oliver, 55 Cal. 2d 761, 770, 12 Cal. Rptr. 865, 361 P. 2d 593.

Justice Schauer called attention to an appellate situation wherein the California Supreme Court's appointment of counsel after the District Court of Appeal had denied such appointment "hindered and delayed rather than furthered or expedited the just disposition of this cause." (Dissenting opinion.)

People v. Gullick, 55 Cal. 2d 540, 552, 11 Cal. Rptr. 566, 360 P. 2d 62.

It should be noted that the rule laid down in *People v. Hyde*, *supra* (51 Cal. 2d 152, 154), is still the rule followed in California.

This respondent could not presume to advance the grounds for upholding the policy of appointment of counsel practiced in California in a more cogent or elo-

quent manner than the Presiding Justice of the California court whose judgment is before this Honorable Court at this time:

"It has been advocated that counsel must be appointed whenever requested (see first concurring opinion *People v. Brown*, 55 Cal. 2d 64 [9 Cal. Rptr. 836, 357 P. 2d 1072].) The argument in favor of this procedure is not that representation is a matter of right, but that the courts (all District Courts of Appeal and all other reviewing courts) are not competent, without the aid of paid counsel, to examine a record on appeal and determine whether the appeal may possibly have merit or is unquestionably frivolous.

"Unlike the constitutional right of indigents to be represented by court-appointed counsel in the trial court, representation on appeal is regarded as discretionary with all reviewing courts, except in rare cases in which appointment of counsel is required by statute. The only requirement in our state is that if counsel is appointed a fee must be paid by the state, in an amount fixed by the court. (Pen. Code, § 1241.)

"Each court must have its own policy, and while these may differ, it is not to be presumed that any court would knowingly deprive an appellant of a substantial right in the matter of an appeal. The general practice has been to appoint counsel in all cases in which representation would serve a useful purpose and to deny counsel in cases of obviously futile appeals. It is our view that the matter should be treated as discretionary as long as the Legislature does not see fit to create the office of public defender for the reviewing courts.

"We must say, on behalf of the District Courts of Appeal, other than our own, that any low estimate of their ability does them an injustice. With rare exceptions the membership of those courts has been drawn from the ranks of lawyers in private practice, and trial judges. Over the years they have demonstrated to the satisfaction of the legal profession, and the public at large, an ability to perform the duties of the office.

"Division Three of the Second District was created in 1941. The six members of the court who have served from time to time formerly served upon the superior court. They had had a combined experience in the practice, both civil and criminal, including four years as deputy public defender, of 121 years, and as judges of trial courts a total experience of 87 years. They have served upon the court a total of 62 years. The court has received able assistance from members of the voluntary committees on criminal appeals of the Los Angeles County Bar Association and the Criminal Courts Bar Association in the examination of records for the discovery of grounds of appeal. It is a type of service that has been traditional with the profession from the earliest times, and the fact that it has been rendered gratuitously has not detracted from its value.

"In recent years there has been a great increase in the number of in propria persona appeals in criminal cases which, of course, is a matter of right. The cost of preparation of records on appeal has been great. Many of these appeals have been abandoned. Applications for appointment of counsel have been numerous. It is necessary for

the court to examine each record in order to properly act upon the request.

"If a record is voluminous counsel may be appointed, by this court, for that reason alone. In other cases counsel are appointed if a doubt exists that the appellant was afforded a fair trial. If appointment of counsel is denied the appellant is notified and given time to file a brief. Some briefs emanating from state prisons are authored by persons of considerable legal ability. But in no case in which appointment of counsel is denied is the appeal dismissed for failure to file a brief. The court, being already familiar with the record, disposes of the appeal on the merits by written opinion, in which the reason for denial of counsel is made clear. Rather than being deprived of a fair hearing, the appellant is given what is probably an excess of consideration.

"We cannot believe that all the courts have been wrong in exercising discretion, based upon an examination of the record, with respect to appointment of counsel on appeal. This court is not in favor of burdening the state with the expense of counsel fees in obviously hopeless cases."

People v. Vigil, 189 Cal. App. 2d 478, 480-482,
11 Cal. Rptr. 319.

Turning to the federal cases, it is seen that the Circuit Courts have repeatedly held that the right to an indigent to have counsel appointed for purposes of his federal court appeal is not a right guaranteed by the Constitution.

Moore v. Aderhold, 108 F. 2d 729, 732-733
(10th Cir. 1959);

Errington v. Hudspeth, 110 F. 2d 384, 386 (10th Cir. 1940); Certiorari denied, 310 U. S. 638, 60 S. Ct. 1087, 84 L. Ed. 1407;

Louvorn v. Johnston, 118 F. 2d 704, 707 (9th Cir. 1941), Certiorari denied, 314 U. S. 607, 62 S. Ct. 92, 86 L. Ed. 488;

Brown v. Johnston, 126 F. 2d 727, 729 (9th Cir. 1942); Certiorari denied, 317 U. S. 627, 63 S. Ct. 39, 87 L. Ed. 507;

Gargano v. United States, 137 F. 2d 944, 945 (9th Cir. 1943);

Gilpin v. United States, 265 F. 2d 203, 204-205 (6th Cir. 1959).

Two cases should be noted, however, wherein this Honorable Court has held that where an indigent seeks to proceed *in forma pauperis* on appeal and the Federal trial court has certified the appeal is *not* taken in good faith (28 U. S. C. §1915, 28 U. S. C. A. §1915), said certification must be displaced upon "a proper showing" before a Court of Appeals and that the Court of Appeals must provide the indigent who challenges that certification "the aid of counsel unless he insists on being his own", but it should be noted that in one of the cases:

"... This does not require that in every such case the United States must furnish the defendant with a stenographic transcript of the trial."

Johnson v. United States, 352 U. S. 565, 77 S. Ct. 550, 551, 1 L. Ed. 2d 593.

In the other case, it was held:

"Normally, allowance of an appeal should not be denied until an indigent has had adequate repre-

sentation. by counsel. (Case cited.) . . . But representation in the role of an advocate is required. If counsel is convinced, after conscientious investigation, that the appeal is frivolous, of course, he may ask to withdraw on that account. If the court is satisfied that counsel has diligently investigated the possible grounds of appeal, and agrees with counsel's evaluation of the case, then leave to withdraw may be allowed and leave to appeal may be denied."

Ellis v. United States, 356 U. S. 674, 78 S. Ct. 974, 975, 2 L. Ed. 2d 1000.

It is submitted that California procedure is certainly harmonious with the spirit of the *Johnson* and *Ellis* cases, *supra*. In contrast to the *Johnson* case, *supra*, California provides that a trial transcript will be before the court in every felony case where an appeal has been lodged: In contrast to the *Ellis* case, *supra*, the reviewing justices in California make a diligent investigation of said record *themselves* (as opposed to a counsel) and evaluate the case to determine whether it would serve the defendant or court any useful purpose to appoint counsel for further proceedings.

Counsel for petitioners relies almost exclusively on the case of *Griffin v. Illinois*, *supra* (351 U. S. 12, 100 L. Ed. 891, 76 S. Ct. 585), for the proposition that the California rule of *People v. Hyde*, *supra* (51 Cal. 2d 152, 331 P. 2d 42), falls short of compliance with Due Process of Law. (Br. for Pet. pp. 13-21.)

Counsel for petitioners states that under the rule in *Griffin v. Illinois*, *supra*, "an indigent convicted of crime is, as a matter of constitutional law, entitled to state aid in obtaining appellate review of trial errors

where review of such errors is available to persons able to pay attendant expenses." (Br. for Pet. p. 13.) Counsel for respondent heartily shares this view.

Counsel for petitioners goes on to cite Justice Traynor for the proposition that "'Denial of counsel on appeal would seem to be a discrimination at least as invidious as that condemned in *Griffin v. People of the State of Illinois, supra*. . . .'" (Br. for Pet. p. 16.)

What counsel for petitioner (and Justice Traynor) fail to point out, is that this Honorable Court also held in *Griffin v. Illinois, supra* (100 L. Ed. 891 at p. 899):

"... We do not hold, however, that Illinois must purchase a stenographer's transcript in every case where a defendant cannot buy it. *The Supreme Court may find other means of affording adequate and effective appellate review to indigent defendants*. . . . The Illinois Supreme Court appears to have broad power to promulgate rules of procedure and appellate practice. We are confident that the State will provide corrective rules to meet the problem which this case lays bare." (Emphasis added.)

Accepting the propositions of counsel for petitioners concerning the extension of *Griffin v. Illinois, supra*, from the right of a defendant to a trial transcript on appeal to the right to a counsel on appeal, it is nonetheless submitted that California has already provided, *supra*, for an effective and satisfactory policy for appointing counsel to represent indigents on appeal (*People v. Hyde, supra*) and this policy was complied with in the instant case, *supra*.

Counsel's final argument in support of his contention that this California procedure does not afford due

process to petitioners is that an alleged error was found in this case that was "obvious" to the public defender and the respondent (conflict of interest at trial) but was not "obvious" to the trial judge, the three justices of the District Court of Appeal, and six of the seven justices of the California Supreme Court. (Br. for Pet. pp. 18-20.)

Apparently, counsel feels that it automatically follows that *only* an appointment of counsel on appeal could prevent such a thing from happening, and that the alternative of independent examination by the appellate court to determine whether counsel should or should not be appointed, must be here declared improper.

Counsel is also assuming that the trial judge and all the justices who considered the instant appeal, except one, missed the "obvious" point (conflict of interests, *supra*), an assumption respondent cannot accept logically. Counsel is also concluding that said "obvious" point is reversible error without allowing for the possibility that the appellate justices considered the point and chose to conclude it was not such an error for the same reasons set out in Argument I. *supra*.

However, accepting counsel's assumption for purposes of argument, it must follow that one trial judge and nine appellate justices would certainly not qualify for such an appointment to represent petitioners, because they failed to see the "obvious".

Respondent is sincerely not trying to be facetious, but is, instead, saying that as certain as the proverbial "death and taxes" is the proposition that you can always find one lawyer who will disagree with another on the validity of any legal point (including the existence of a meritorious point on appeal). To say other-

wise is to ignore a multitude of opinions of this Honorable Court, and lesser appellate courts across the land that fell short of being unanimous decisions.

It is safe to assert that counsel for petitioners would, if he were an indigent defendant, rather have his trial record reviewed for possible error by a group of experienced appellate justice who "are conscientious to a fault" (Br. for Pet. p. 20), than have said record assigned to a private practicing counsel who may treat his court appointment with irritation and undue haste, as many do.

Counsel for petitioners suggests that to allow the reviewing court the right to make an independent examination of the record to decide if defendant needs counsel, commits that court to a determination that there is no error, if said court decides no counsel should be appointed. (Br. for Pet. p. 20.)

Respondent offers no guarantee that such cannot happen just as counsel for petitioners can offer no guarantee that certain jurists do not have a blind spot when particular propositions of law arise, and, in a given case involving such a proposition of law, said jurist will decide a case in a manner prejudiced by said proposition. This is a weakness in the man, not the system.

It is forcefully felt, however, that there is nothing in the instant record to support counsel for petitioners' implication that the issues of the instant case were predetermined when the District Court of Appeal reviewed the record for purposes of deciding on whether or not to appoint counsel, or that they overlooked an "obvious" point of law.

Conclusion.

It is submitted that petitioner Douglas was not deprived of Due Process of Law by having the Public Defender represent he and petitioner Meyes at the trial level. Douglas further suffered no deprivation of due process in not receiving a separate copy of the trial transcript. Neither petitioner was entitled to appointment of counsel on appeal, as a matter of due process, where an independent review of the trial record was made by the District Court of Appeal, and said court decided not to appoint counsel.

Therefore, it is respectfully requested that petitioners' convictions be affirmed.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 34

WILLIAM DOUGLAS and BENNIE WILL MEYES,

Petitioners,

vs.

PEOPLE OF THE STATE OF CALIFORNIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

SUPPLEMENTAL BRIEF FOR PETITIONERS

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 34

WILLIAM DOUGLAS and BENNIE WILL MEYES,

Petitioners,

vs.

PEOPLE OF THE STATE OF CALIFORNIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

SUPPLEMENTAL BRIEF FOR PETITIONERS

Re-argument of this case in conjunction with other cases involving the right to counsel, necessitates a brief re-statement of the issues presented by these petitioners.

Issues as to Assignment of Trial and Appellate Counsel

1. Petitioners, indigent defendants, were tried jointly and were each convicted on all counts of indictments for 13 felonies.

A Deputy Public Defender, hereinafter called the Public Defender, was assigned to both petitioners jointly for their trial. At the commencement of the trial, the Public Defender moved for a continuance on the ground that he had had insufficient time for preparation; then for appointment

of separate counsel for each defendant on the ground that they had conflicting interests and would be prejudiced by joint representation by one attorney; and, upon the denial of the latter motion, for a continuance for petitioner Douglas to retain counsel. Petitioners contend that the denial of these motions deprived them of the effective aid of counsel for their trials and thus of the due process of law guaranteed by the Fourteenth Amendment.

2. Petitioners appealed their convictions as of right to the intermediate appellate court. That court denied their applications for assignment of counsel to aid them in prosecuting their appeals, stating that no good would be served by such appointment (R. 193).

In its refusal to assign counsel for the appeal, the intermediate appellate court followed the ruling of the highest court of California that a court may, on the appeal of an indigent defendant, examine the record and refuse the aid of counsel unless "it would be helpful to the defendant or the court" in the determination of the case. *People v. Hyde*, 51 Cal. 2d 152, 154, 331 P. 2d 42. See discussion of rule in *People v. Brown*, 55 Cal. 2d 64, 69, 77, 375 P. 2d 1072, and Resp. Brief in this Court, pp. 33-38. This rule as here applied, authorizes the denial of counsel though meritorious questions, of complexity and of State and Federal Constitutional right, are presented by the appeal.¹

Petitioners contend that under the circumstances California's denial of the aid of counsel for their appeals violated the guarantees of equal protection and due process of the Fourteenth Amendment.

¹ The Supreme Court of California denied petitions for review by that court, one judge dissenting (R. 194).

I.

Petitioners Were Deprived of the Due Process of Law Guaranteed by the Fourteenth Amendment in That They Were Denied the Effective Aid of Counsel by the Trial Court.

A. Need for Counsel

Argument for the overruling of *Betts v. Brady*, 316 U.S. 455, extensively presented in a companion case, will not be reiterated here. In any event, even under the *Betts* ruling petitioners were entitled to the aid of counsel for their trials. Each petitioner's defense required study of the possible evidence for and against him on 12 separate occasions as well as evaluation of the evidence against his co-defendant. (See indictment, R. 1-7.) Furthermore, the most serious count, carrying a possible sentence of 14 years—assault with intent to murder (R. 4; California Penal Code, sec. 217)—presented a refined question of intent. Compare *McNeal v. Culver*, 365 U.S. 109, 114-115. And a search for witnesses and other preparations for their defense by petitioners themselves, was impeded by their incarceration in jail, for lack of bail, until the trial (R. 9).

Finally, the past records of the petitioners posed special difficulties as to whether each should testify as well as other evidentiary questions. (Petitioner Meyes had a record of felony convictions, including second-degree murder in connection with the crimes here charged, whereas petitioner Douglas had been acquitted on the murder charge and had no convictions except for a misdemeanor (R. 35-36, 79).)

The record does not show the level of petitioners' schooling. However, even an educated layman would not have the skill and knowledge necessary to cope with the ex-

gencies of defense in this case. A trial without counsel was "so apt to result in injustice as to be fundamentally unfair" and violate due process. *Ureges v. Pennsylvania*, 335 U.S. 437, 441.

B. *Effective Aid—Counsel's Opportunity to Prepare*

The right to counsel means the "effective assistance of counsel," and this primarily requires an opportunity for counsel to prepare the defense. *Hawk v. Olson*, 326 U.S. 271, 274; *White v. Ragen*, 324 U.S. 760, 764. Counsel must have "time and facilities for investigation and for the production of evidence." *Adams v. U. S. ex rel. McCann*, 317 U.S. 269, 279.

Need for Continuance and Rulings of Courts Below

Here the Public Defender, moving for a continuance at the opening of the trial because he was insufficiently prepared, stated that he had been continuously on trial on assignment to other defendants since his assignment to petitioners; that the case was complex, involving two defendants and 13 felony counts against each; that the defendants wanted to present alibi defenses which required investigation (R. 29, 34);² and that preparation of the defense required his examination of voluminous testimony in a preceding trial in which evidence had been introduced, as to all or some of the robberies here alleged (R. 34, 43). After his motions had been denied, the Public Defender, to moderate his stand, indicated he could study the prior transcript as this trial proceeded (R. 75-76). However, this statement in context, did not reflect real confidence in his preparation even on this one aspect of the case, as much as his view that petitioners were better off with some

² The alibi evidence may have been substantial, at least for petitioner Douglas; alibi defenses apparently had been presented in the previous trial for homicide in which he had been acquitted (R. 173).

counsel than *no* counsel; it also smacked of an effort under pressure to defend his professional competence and diligence (R. 75-76).

In denying the motion for a continuance for further preparation, the trial judge indicated no reasons except that the possibility of alibi evidence seemed to him insubstantial (R. 34); that study of the transcript of the prior trial would constitute an unusually high level of preparation (R. 171); and that he was in general impatient with the efforts to secure a continuance (R. 34, 36).

The appellate court, upholding the trial court, did not advert to the Public Defender's grounds for requesting a continuance. Instead, it quoted (R. 184) his moderating remark about his need for preparation, without considering its context; and it ignored his continued assertion, even in his closing remarks and despite pressure: "I would like to be better prepared than I am now" (R. 76). The court concluded: "As the People suggest, . . . defendants were attempting improperly to delay the proceedings by a last-minute dismissal of the public defender" (R. 186).

In view of the appellate court's refusal to appoint counsel for the appeal, the only argument presented to that court on right to counsel appears to have been the State's argument that the motions for a continuance were not made in good faith. (See Petr's brief in this Court, p. 19, quoting the State's brief in the court below.)

Error in Denial of Continuance

Respondent's suggestions of dilatoriness and bad faith in petitioners' motions for a continuance (R. 40, Resp. Br., p. 14) stem from the fact that they followed a motion at the commencement of the trial to disqualify the sitting judge, and that the various motions were not made until the

opening of trial. While the motion to disqualify is unsupported by argument and may appear at first glance a merely dilatory move (R. 28-30), in fact petitioners had substantial reason to fear pre-judgment against them: The judge had presided in a trial where an alleged accomplice had been convicted for the charged crimes (R. 33). Compare *Darcy v. Handy*, 351 U.S. 454.

Further, we urge that the right to effective aid of counsel would be dissipated if the Court can deny a continuance despite objective facts showing lack of time for preparation, on the basis of speculation as to counsel's subjective good faith. Finally, assuming the Public Defender was remiss in not making the motions before the trial date—albeit he was on continuous assignments until then—petitioners cannot be deprived because of the dereliction of State-assigned counsel, of their Constitutional right to effective aid of counsel. See *Johnson v. United States*, 110 F. 2d 562, 563 (C.A.D.C.); *United States v. Handy*, 203 F. 2d 407, 426 (C.A. 3).³

The need of the indigent defendant for preparation by his attorney is even greater than that of other defendants, because he generally is, as in the instant case, in jail for inability to furnish bail. See *Equal Justice for the Accused* (Report by a Special Committee of the Association of the Bar of the City of New York and the National Legal Aid Association, 1951), p. 35. Approximately eighty jurisdictions now meet the issue of counsel for the indigent through a public defender system, and the need for investigation and preparation is one of the most acute problems in the proper functioning of this system (*ibid.*, pp. 44, 58-60). For a State court to rely on the public defender system but refuse to consider the realities as to the de-

³ Compare position of "freely-selected" attorney: *Link v. Wabash R.R. Co.*, 370 U.S. 626.

fender's opportunity for preparation of a complex case, is not to supply the effective aid of counsel.

"The denial of opportunity for appointed counsel . . . to prepare his defense, could convert the appointment of counsel into a sham . . ." *Arvey v. Alabama*, 308 U.S. 444, 446. Here the conscientious attempt of the public defender to secure time to meet his obligation to prepare his case, was brushed aside.

C. Effective Aid—Counsel's Undivided Loyalty to Defendant

Due process for the defendant requires counsel in a position to give full and effective aid—that is, in a position to accord the undivided loyalty to the defendant's interests that is the accepted obligation of an attorney to his client. Compare *Glasser v. United States*, 315 U.S. 60.⁴

The public defender, moving for the appointment of separate counsel for each defendant, pointed out that petitioner Douglas would be prejudiced by joint representation because Meyes had been convicted, and Douglas acquitted, of second-degree murder in connection with the crimes for which they were now indicted. An attorney could not take full advantage of this acquittal for Douglas if he was at the same time trying to protect Meyes (R. 31, 36; see R. 148-9). Not only during the trial but particularly at the time of sentence, it would be important to Douglas for his attorney to stress the difference in their records.

⁴ The degree to which the lawyer's conduct of the litigation binds his client. See *Lirk v. Wabash R.R. Co.*, *supra*, is one of the factors that engenders the attorney's correlative duty of loyalty.

⁵ An advocate's presentation at the time of sentence may have great importance. *Von Moltke v. Gillies*, 332 U.S. 708, 721.

To assign separate counsel at the sentencing stage, who had no acquaintance with the proceeding, would not insure effective aid. See *Gadsden v. United States*, 223 F. 2d 627, 630 (C.A.D.C., 1955).

Consider the need for correction of the prosecutor's erroneous statement (R. 162) that "they" shot a policeman.

Further, Meyes' record of felony convictions as compared to Douglas' clear record (R. 79, 142-3) would bear on whether each should take the stand; and the decision of each would affect the other, particularly since California permits comment on a failure to testify. "Each of the defendants was entitled to have questions of this nature considered and decided by counsel independent of the interests of the other." *People v. Lanigan*, 22 Cal. 2d 569, 576, 140 P. 2d 24.

Finally, several witnesses failed to identify Douglas with the same clarity they identified Meyes (R. 106, 122, 127). Clearly, cross-examination of these witnesses would differ depending on whether counsel had an undivided interest in Douglas or in Meyes. See *Glasser*, 315 U.S. at pp. 72-73; *Craig v. United States*, 217 F. 2d 355, 359 (C.A. 6, 1954).

In short, there were many instances where joint counsel for petitioners would be torn by conflicting loyalty, where he would have to balance the interest of one against the other and where one or the other would be disadvantaged.

In addition, joint counsel would increase the danger—already a factor because of the joint trial—that Douglas would be so much identified with Meyes in the jury's eyes that he would be stigmatized by Meyes' conviction (R. 36), as well as by Meyes' belligerence and recalcitrance on the stand (see R. 38, 46-48, 90, for comparison of their demeanor). Indeed, it was already apparent in the colloquy on the motions at the outset of the trial that petitioners were being regarded indiscriminately as "they" and Douglas tarred with Meyes' conduct (see R. 41)."

* In *Glasser*, 315 U.S. at p. 76, this Court indicated that the burden on counsel of being forced to represent an additional de-

The trial court stated no reason for denying the motion for separate counsel (R. 36) and the appellate court did not advert to this issue at all. Respondent in this Court indicates that this motion too was dilatory and in bad faith (Resp. Br., pp. 17-18, 22-23). Here the public defender felt the need for separate counsel so strongly that even after the denial of his motion, he stated that his "conscience forced" him to re-assert the need (R. 41-42). The inference that the motions were dilatory seems to reflect the erroneous concept that the public defender did not have or feel the same duty of diligence as a retained attorney would, and made the various motions only because of petitioners' desire to avoid trial. And, as we already pointed out (p. 6), assuming *arguendo* that the Public Defender should have made the motion in more timely fashion, the petitioners cannot be penalized in their rights because of the neglect of their assigned counsel.

Thus the public defender was defeated in attempting to carry out his two cardinal obligations: preparation of his case and loyalty to his client. (See *Equal Justice for the Accused*, cited *supra* p. 6, at p. 56.) Petitioners were thus denied the effective aid of counsel and due process of law.

D. Defendant's Opportunity to Retain Counsel

Petitioner Douglas' motion for a continuance to retain counsel was denied on the mere basis that the motions for a continuance were made piecemeal (R. 36), even though this motion stemmed from the denial of the previous one for the appointment of separate counsel. Petitioner Doug-

fundant in itself deprived the defendants of effective aid. Particularly in view of the public defender's lack of opportunity to prepare, this factor must be considered, together with the conflict of interest between petitioners and the prejudice to Douglas from identification with Meyers.

las had contacted an attorney the day before the trial and had some assurance he could secure the attorney's services (R. 36, 46, 79); it was only on that day that the Public Defender discussed with petitioners the possible conflict of interest between them (R. 31).

When petitioner Douglas became aware—and if belatedly it was the fault of assigned counsel—of his need to retain counsel, he was not then given “a fair opportunity to secure counsel of his own choice.” See *Powell v. Alabama*, 287 U.S. 45, 53; *Crooker v. California*, 357 U.S. 433, 439; *Melanson v. O'Brien*, 191 F. 2d 963, 968 (C.A. 1).

II.

California's Refusal to Furnish Petitioners With the Aid of Counsel in Their Appeals From Their Convictions, Violated the Constitutional Guarantees of Equal Protection and Due Process.

A. Equal Protection

Indigent defendants must have “the same opportunities” as those of means, to invoke appellate remedies. *Burns v. Ohio*, 360 U.S. 252, 257-8. A “State that does grant appellate review can (not) do so in a way that discriminates against some convicted defendants on account of their poverty.” *Griffin v. Illinois*, 351 U.S. 12, 18. The question therefore is whether and when a convicted indigent defendant suffers substantial disadvantage and discrimination in his appeal because of his inability to retain counsel. Is assignment of appellate counsel necessary to preserve equality between rich and poor in their subjection to penal measures? *

* And see *Smith v. Bennett*, 365 U.S. 708, applying the *Burns-Griffin* principle to a collateral post-conviction remedy.

* State practice varies as to supplying appellate counsel. See *People v. Brown*, 55 Cal. 2d 64, 69, note 1, 375 P. 2d 1072.

Under Federal *forma pauperis* practice, a defendant's appeal cannot be held frivolous unless he has been assigned counsel to determine if there is a basis for argument that the appeal is meritorious. And in the determination of an appeal on the merits, the necessity for the assignment of counsel is assumed without question. *Coppedge v. United States*, 369 U.S. 438. See also *Johnson v. United States*, 352 U.S. 565, 566. Since the purpose of *forma pauperis* procedure is the same as the purpose of the *Burns-Griffin* holding—that is, to equalize justice for the rich and poor—it could well be argued that equal protection requires the aid of counsel for an indigent before an appellate court can make even the determination of frivolity. For certainly a person of means has an advocate search the record to find a meritorious issue before he abandons his appeal and his hope of freedom from penal sanction. Compare *Anderson v. Heinze*, 258 F. 2d 479, 481 (C.A. 9), cert. den. 358 U.S. 889: the effective aid of counsel includes a search by counsel for meritorious issues.

In the case at bar, however, it is not necessary to go as far as considering whether the Federal *forma pauperis* rule is required by equal protection. For, the California holding is that even when an appeal is meritorious and presents on the face of the record issues of complexity and of Constitutional right—which are known to the appellate court—counsel can nevertheless be denied to an indigent. Upon such denial, the court itself is to research the record on behalf of the defendant (see *People v. Oliver*, 55 Cal. 2d 761, 770, 361 P. 2d 593), and consider whether error was committed.

(note 8 contd.)

A commentator suggests that logical application of the *Griffin* decision requires the State to supply counsel for an appeal by an indigent convicted defendant. Note, *Effect of Griffin v. Illinois*, 25 (1957) *Chicago Law Rev.* 161, 170-171.

California cannot mean or expect that appellate judges will so far depart from their customary roles and disciplined attitudes as to become whole-hearted advocates for appellant. At the most, on a realistic view of human possibilities, the appellate judges act as *amici curiae* for appellant. Compare *Ellis v. United States*, 356 U.S. 674, 675, where, in discussing representation of an indigent on his application for leave to appeal in *forma pauperis*, this Court said: "the two attorneys appointed by the Court of Appeals performed essentially the role of *amici curiae*. But representation in the role of an advocate is required." Though the State was represented in the instant appeal by an attorney and though he would be countered in a paying case by an advocate for the defendant, these defendants were deprived because of their poverty of an advocate's aid before the California bench.

The substantiality and complexity of the Constitutional issues presented by petitioners' appeals—and thus their need for appellate counsel—has already been indicated in Point I. And the appellate court's treatment of those issues will further indicate the role for appellate counsel in this case.

(1) In upholding the denial of a continuance for further preparation, the appellate court quotes the same remarks by the Public Defender as are quoted in respondent's brief in this Court; and like respondent indicates the motions were in bad faith (R. 184; Resp. Br., pp. 8-9, 14). A perusal of the record by an advocate would reveal that these remarks were taken out of context and do not accurately reflect the Public Defender's judgment on his need for preparation (pp. 4-6, *supra*), and would also reveal ample basis for an argument that the motion was made in good faith.

(2) Petitioner Douglas' need for counsel to emphasize the differences between him and Meyes is evidenced by the appellate court's statement that "defendants were obstreperous and insolent" (R. 193, note); this impression may well have stimulated the court's view that the motions for continuance were made in bad faith. As we already pointed out (p. 8, *supra*), the record reveals at the most an unruly attitude on the part of Meyes. The court's indiscriminate coupling of them, which copies respondent's practice in the trial court, is most unfair to Douglas.

(3) The appellate opinion takes no note whatsoever of the issue as to the need for separate counsel and the conflict of interest between petitioners.

Petitioner Douglas' argument that he needed separate trial counsel in order to secure effective aid was not presented in petitioner Meyes' *pro se* brief, which the appellate court stated was submitted for both of them (R. 192). Respondent noted the motion for separate counsel only to argue that it had not been made in good faith, basing this argument on the non-sequitur that Douglas stated at one point that "he was prepared" for trial (Petr's brief in this Court, p. 19, note).

Because Douglas was unrepresented and no argument was held in the appellate court, an important California decision on the conflict of interest question was not formally brought to the court's attention, let alone argued to it (*ibid.*).

(4) The appellate court takes no note of Douglas' motion for a continuance to retain trial counsel (discussed pp. 9-10, *supra*).

(5) Neither does the appellate opinion mention the issue of whether Douglas should have been supplied with a trial

transcript for the purposes of his appeal (discussed in Petr's brief in this Court, pp. 3-4). There may have been reasons under the prison conditions in California why he could not obtain it from Meyes, or he may have attempted to do so and failed. Whether supplying the transcript to Meyes afforded Douglas an adequate opportunity to appeal under the *Burns-Griffin* rule, was itself an issue that could not be determined without counsel.

Only a word need be said about the appellate court's remark in support of its refusal of appellate counsel, that Meyes' *pro se* briefs "present all possible points clearly and ably . . ." (R. 193). This case illustrates the difficulty of a court's making such an evaluation without assigning counsel, since Meyes did not, as respondent concedes, make any presentation of the important conflict of interest point (see Petr's Br., p. 19, note). And legal craftsmanship does not consist merely of the citation of cases with which prison-written briefs abound.*

At least where there are meritorious issues of some complexity, including Constitutional questions as in this case, the State denies equal protection when it refuses the aid of counsel for an indigent defendant's appeal. Certainly a layman cannot adequately represent himself on such issues of law. See *Johnson v. Zerbst*, 304 U.S. 458, 467. Nor can the appellate judges adequately represent appellant. There is great discrepancy in the opportunity to secure an appellate remedy for injustice and error, between a case where appellant is represented by an advo-

* Cf. Cardozo, *Nature of the Judicial Process* (Yale Univ. Press, 1921) pp. 20-21: "Some judges . . . match the colors of the case at hand against the colors of many sample cases . . . But, of course . . . no judge of a high court, worthy of his office, views the function of his place so narrowly. If that were all there was to our calling, there would be little of intellectual interest about it."

cate and the instant case where the court attempts to represent appellants' interests as well as to judge them. Compare *Eskridge v. Washington Prison Bd.*, 357 U.S. 214; *People v. Breslin*, 4 N.Y. 2d 73, 82 (Fuld, J. dissenting): the court cannot examine the record "as carefully or as critically as single-minded counsel for the appellant"; *Carnley v. Cochran*, 369 U.S. 506: "As must generally be the case, the trial judge could not effectively discharge the roles both of judge and defense counsel."

Such a radical difference on the basis of wealth in the opportunity to secure appellate justice is not tolerable under the equal protection clause.

B. Due Process

Regardless of the dictum in *McKane v. Durston*, 153 U.S. 684, 687-8, that a State was not constitutionally obliged to create appellate procedure because it had not existed at common law, review as of right of felony convictions is a long-established part of the system of justice throughout the United States.

It would offend our basic concept of justice if, when a grave crime and grave punishment is at stake, the defendant had no right to appeal.

"An appeal when grounds exist is an inseparable part of the process through which the individual's guilt or innocence of the charges brought against him by the state is established." *Equal Justice for the Accused*, cited *supra* p. 6, at p. 61. "Gaining reversal of an improper conviction is no less vital to a defendant whose liberty . . . (is) at stake than . . . obtaining an acquittal from the jury in the first instance." *People v. Breslin*, 4 N.Y. 2d 73, 81 (Judge Fuld dissenting).

For the presiding judge to have the sole say as to the correctness of his conduct and rulings—rulings made, moreover, in the heat and haste of trial—would be basically unfair. Compare *Rexford v. Brunswick-Balke Co.*, 228 U.S. 340, 343-344, as to appellate judge's review of question he considered below; compare *In re Oliver*, 333 U.S. 257, 284-285. We urge that due process requires some means of assuring in a grave criminal case, besides the edicts of the sitting judge, that the defendant is given a "trial according to some settled course of judicial proceeding." See *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. 272, 280. Since trial errors as such are not Constitutional violations correctible by habeas corpus, appellate review is the only assurance that defendants are accorded the procedure due them under State law.

As to an unconstitutional conviction, this Court has said many times that the State must there furnish a remedy.¹⁰ If it were to afford only a collateral remedy—new proceedings which the convict must initiate—an indigent without counsel is at a grave disadvantage; he is likely to acquire the knowledge and means of bringing the proceeding only after a long interim, if at all. Thus, we urge that due process requires an appellate remedy for an unconstitutional felony conviction as well as for errors which do not rise to the level of a constitutional violation.

If, as we have argued, due process requires the State to furnish an opportunity for appellate review of a felony conviction, more than the mere formality of review is required. Counsel must be assigned to an indigent, at least when the "circumstances of a defendant or the difficulties involved in presenting a particular matter are such that

¹⁰ *Mooney v. Holahan*, 294 U.S. 103, 113. *Moore v. Dempsey*, 261 U.S. 86, 91.

a fair and meaningful hearing cannot be had without the aid of counsel." *Dillon v. United States*, decided Aug. 22, 1962 (C.A. 9), 31 USLW 2120. As we have already pointed out (*supra*, pp. 12, 14-15), the appellate issues here were complex, and a fair review required the aid of counsel.

The question of whether due process demanded the assignment of counsel to petitioners for their appeal can also be approached from another standpoint.

Whatever judicial procedure the State establishes must be administered fairly. Since the State provided an appellate court which "considers questions raised under the Federal Constitution, the proceedings in that Court are a part of the process of law under which the petitioners' convictions must stand or fall" and must be fairly conducted. *Cole v. Arkansas*, 333 U.S. 196, 201-2. The appellate proceedings "are merely the final step in the judicial process in trying cases and therefore cannot be conducted so as to deny that 'due process' which the Fourteenth Amendment requires . . . The appeal here was but a continuation of petitioner's defense which began in the trial court." *National Union v. Arnold*, 348 U.S. 37, 45-6 (dissent). See also *Beck v. Washington*, 369 U.S. 541; *Lawn v. United States*, 355 U.S. 339, 349-350.

The appellate procedure is not administered fairly when, as in the instant case, there is one-sided advocacy on complex legal issues—on behalf of the prosecution, but not on behalf of the defendant.¹¹

¹¹ Another due process approach to the question of assignment of counsel is that the adversary method is an established part of California's appellate procedure, and petitioners are therefore entitled to its benefits along with other litigants. Compare *Accardi v. Shaughnessy*, 347 U.S. 260, 268.

Conclusion

It is respectfully submitted that the judgments should be reversed and a new trial ordered.

Respectfully submitted,

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DEC 31 1962

JOHN F. DAVIS, CLERK

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No. 34

WILLIAM DOUGLAS and BENNIE WILL MEYER,

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THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

RESPONDENT'S SUPPLEMENTAL BRIEF.

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IN THE
Supreme Court of the United States

October Term, 1962.

No. 34

WILLIAM DOUGLAS and BENNIE WILL MEYES,

Petitioners.

v.s.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

RESPONDENT'S SUPPLEMENTAL BRIEF.

Introduction.

On March 5, 1962, the "Brief For Petitioners" in the instant case was filed. On April 5, 1962, the "Respondent's Brief" was filed. On April 17, 1962, this Honorable Court heard oral argument in this matter. On June 25, 1962, this court ordered this case to be reargued in conjunction with two other cases, to wit, *Gideon v. Cochran*, No. 155, and *Draper, et al. v. Washington*, No. 201. Then on October 9, 1962, this court ordered the case of *Lane v. Brown*, No. 283, calendared for argument along with the above two cases and the instant case.

On or about December 5, 1962, a "Supplemental Brief For Petitioners" was filed in the instant case. Respondent respectfully submits the within "Respondent's Supplemental Brief" in response to said petitioners' supplemental brief.

I.

Petitioners Were Not Denied the Effective Aid of Counsel by the Trial Court.

First of all, the author of the supplemental petitioners' brief seeks to invoke the aid of Mr. Abe Fortas' "Brief for The Petitioner" filed in the companion case of *Gideon v. Cochran*, No. 155. (Supp. Br. for Pet. p. 3.)

It is submitted that the author of petitioner's supplemental brief has missed the force and effect of respondent's argument in its original brief with respect to the representation of the two petitioners at their trial. Respondent did not and does not argue that the petitioners were not entitled to have any counsel whatever appointed for them in the instant non-capital case because of this Honorable Court's pronouncements in *Betts v. Brady*, 316 U. S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595.

Indeed, it is submitted that the entire argument advanced by respondent in its original brief before this Honorable Court, centers around the facts of the instant case which show that the indigent petitioners did, in fact, have an effective counsel appointed to represent them; that they dismissed him improperly; that the claim that they were legally entitled to separate counsel was and is without merit; that the claim that they had a "conflict of interest" was not borne out by the facts; and finally that the principles enunciated by this Honorable Court in *Glasser v. United States*, 315 U. S. 60, 62 S. Ct. 457, 86 L. Ed. 680, are harmonious with the convictions in the instant case, and a reversal of this case cannot be predicated on the reversal had in the *Glasser* case, *supra*. (Rep. Br. pp. 12-28.)

In discussing the need for a continuance in the case at bar and the alleged error in denying a continuance to the public defender (Supp. Br. for Pet. pp. 4-7), the author of petitioners' supplemental brief demonstrates a lack of knowledge of the background facts which were placed before this Honorable Court during oral argument on April 17, 1962.

In said oral argument it was brought out that on or about February 24, 1959, and again on May 11, 1959, both petitioners had been tried for a murder (the first trial ending in a mistrial and the second trial resulting in a second degree conviction of Meyes and an acquittal of Douglas). As early as November 6, 1958, the public defender had been appointed to represent Meyes against said murder charge (Deputy Public Defender Breckinridge). During the two murder trials, evidence of the instant robberies was introduced to show a motive for this murder of one of the police officers attempting to arrest petitioners for the instant robberies.

People v. Meyes, 198 Cal. App. 2d 484, 490,
18 Cal. Rptr. 322.

Also see:

Resp. Br. pp. 23-24.

The public defender represented Meyes in both murder cases and Douglas had a private counsel.

As to the instant case, the public defender represented both petitioners at a preliminary hearing on August 3 and 4, 1959 and in a 227-page preliminary record. 141 pages were made up of cross-examination by the public defender representing both petitioners (Deputy Public Defender Salter).

Thus, when the instant trial commenced on September 30, 1959, the Los Angeles Public Defender's Office had been connected with petitioner Meyes for approximately 10 months, and had been connected with both petitioners on a joint basis for almost two months prior to the opening day of trial!*

It is submitted that there was ample time for that office to prepare a solid legal defense for both petitioners, and also that there was ample time to present any real "conflict of interests" problems to the trial court prior to the opening day of trial.

Petitioners not only had a preliminary hearing on August 3, 1959, *supra*, with joint representation by the public defender, but they were arraigned on August 18, 1959, and the public defender was formally appointed to represent them at the trial! Nothing was said at this time about any "conflict." [Tr. of R. p. 9.]

Again, on August 21, 1959, the petitioners were in court and entered their pleas. Again, nothing was said about any "conflict." [Tr. of R. p. 10.]

Thus, there was ample opportunity in open court on at least three separate occasions for the public defender to raise a question of "conflict of interests" and make a showing of what the "conflict" was.

The author of petitioners' supplemental brief contends that the only argument made to the District Court of Appeal on the issue of right to counsel "appears to have been the State's argument that the motions for a con-

*The preliminary hearing transcript and the murder trial transcripts can be lodged with this Honorable Court, if they desire to corroborate these representations.

tinuance were not made in good faith." (Supp. Br. for Pet. p. 5.)

As an officer of the Honorable Court, respondent respectfully submits to the court that the issue of the denial of petitioners motions for continuance and their alleged "conflict of interests" was discussed at length in Respondent's Brief in the District Court of Appeal. While the petitioners failed to raise the alleged "conflict" problem, respondent presented it fully and, although no oral argument was had since petitioners were *in propria persona*, respondent cited to the court the then recently decided "conflict of interest" case of *People v. Kerfoot*, 184 Cal. App. 2d 622, 7 Cal. Rptr. 674. Thus, the District Court of Appeal was completely informed of all matters that are now before this Honorable Court.*

The author of petitioners' supplemental brief next turns the argument to the question of whether or not both Meyes and Douglas could have been effectively represented by the one public defender appointed in their case, whom they later dismissed. (Supp. Br. for Pet. pp. 7-9.) Respondent's earlier argument on this point is found at pages 12-28 of Respondent's Brief, *supra*.

Essentially respondent urged in its original brief that the facts of the instant case showed no such trial conflict of interests as occurred in *Glasser v. United States*, *supra* (315 U. S. 60, 62 S. Ct. 457, 86 L. Ed. 680), between Glasser and Kretske. (Resp. Br. pp. 15-16.) Both Kretske and Glasser had totally different roles in the alleged crime charged against them.

*A copy of respondent's brief in the District Court of Appeal can likewise be lodged with this Honorable Court to substantiate the above representation.

In the case at bar, the testimony of the many eyewitness-victims of the various counts charged against Meyes and Douglas was received. It is submitted that an analysis of all of the eyewitness testimony squarely identifies both Douglas and Meyes as perpetrators of the 13 counts charged. [Tr. of R. pp. 104-151.]

Now, the author of the petitioners' supplemental brief contends at page 8 of said brief that Fanny Tubbs failed to identify Douglas with the same clarity as Meyes, citing the Transcript of Record page 106. If the court looks at page 106 of the instant record, it is submitted that it clearly appears that Miss Tubbs identified both petitioners *in court* as being the armed robbers she had seen. She did acknowledge that she had seen Meyes at some date prior to the instant robbery of her. However, failure to have seen Douglas before the crime hardly detracts from her unhesitant courtroom identification.

The author of the petitioners' supplemental brief points to the "weak" identifications of Douglas by one Mr. Hatch and one Mr. Carroll in their testimony. [Supp. Br. for Pet. p. 8, Tr. of R. pp. 122, 127.] However, it is submitted that one man found Douglas "similar in build" [Tr. of R. p. 124] and the other found Douglas "resembles" the other armed perpetrator of the robbery. Both identified Meyes. [Tr. of R. pp. 127-128.] These identifications of Douglas must be examined in connection with Douglas' admissions to Officer Bitterolf that he had been in "a whole lot" of robberies with "Bennie" (Meyes). [Tr. of R. p. 148.] Also, Mr. Hatch's identification of Douglas is bolstered by the fact that Mr. Hatch's wallet was found in Douglas' bedroom. [Tr. of R. pp. 125, 147-148.]

These cited instances of "clarity" of identification fall far short of a demonstration of a trial "conflict of interest" in the evidence received against the petitioners, and certainly they cannot be brought within the ambit of the "conflict" found in *Glasser v. United States*, *supra*, 62 S. Ct. 457.

Also in this connection, it should be remembered that the evidence of the instant robberies and assaults had been introduced in the earlier murder cases against petitioners, and that neither petitioner advanced an alibi or any other defense that conflicted with the other's interests, *supra*.

People v. Meyes, *supra*, 198 Cal. App. 2d 484, 490.

See also:

Resp. Br. pp. 23-25.

Next, it should be noted that in both briefs filed on behalf of petitioners, the contention is made that Meyes and Douglas needed separate counsel so that the counsel representing Douglas could take advantage of the fact that Douglas had been acquitted of the earlier murder charge and that Meyes had been convicted of said murder in the second degree. (Br. for Pet. pp. 6-8; Supp. Br. for Pet. p. 7.)

It is submitted that both petitioners' briefs fail to spell out what the particular advantage to Douglas would be. There is absolutely no showing made of a burdensome "conflict of interests" necessitating that each petitioner have separate counsel. A mere conclusion absent any analysis of the facts is advanced. Let us turn to the evidence of the police killing in the *instant* record for a minute, and set aside the prior murder trials:

Police Officer Bitteroli stated that he was one of the officers who arrested the two petitioners. He went to Douglas' apartment along with a fellow officer, Gene Nash. He had occasion to go to Douglas' bedroom and he found Officer Nash wounded. He talked with Douglas, who admitted to "a whole lot" of robberies that he had committed with "Bennie" (Meyes). Officer Bitteroli asked Douglas where his (Douglas') gun was and Douglas stated "You're going to find out anyway. Bennie got it. That's the gun he used to shoot the officer with." [Tr. of R. p. 148.]

Officer Bitteroli acknowledged that Officer Nash died later, and that petitioner Meyes had been apprehended a block from Douglas' apartment. He had observed that Nash's gun had been fired and Douglas had been wounded. [Tr. of R. pp. 149-150.]

It is submitted that this is the sum total of any evidence of a killing offered in the instant case. Said evidence came in to show how, when, and where the petitioners were apprehended. It also showed that an officer had been shot in an attempt to arrest petitioners, indicating an attempt to avoid arrest by petitioners.

It is indeed to be wondered what advantage a separate attorney could gain for Douglas on these facts. It must be noted here that the instant jury could not be told that a murder case was even brought out of these facts, and that one petitioner had been acquitted (Douglas) and one convicted (Meyes).

The only possible way the jury could have been informed that either petitioner had ever had any connection with any murder at all, would be if Meyes had testified, and the prosecution had utilized the murder conviction to impeach his credibility.

California Code of Civil Procedure Section 2051 provides:

"A witness may be impeached by the party against whom he was called, by contradictory evidence or by evidence that his general reputation for truth, honesty, or integrity is bad, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he had been convicted of a felony unless he had previously received a full and unconditional pardon, based upon a certificate of rehabilitation."

Assuming Meyes takes the stand, how far can a prosecutor go in his questioning with respect to the prior murder conviction?

"The inquiry of the cross-examiner is limited to the fact of the conviction of a felony and the nature of the crime. (Cases cited.) *He may not go into details or circumstances surrounding the offense.* (Cases cited.)" (Emphasis added.)

People v. Miller, 188 Cal. App. 2d 156, 170, 10 Cal. Rptr. 326.

Thus, even if Meyes takes the stand, it could only be brought out that he had been formerly convicted of a murder in the second degree. The person murdered and other details could not be placed in front of the instant jury. Therefore, what advantage *per se* really exists in the acquittal of Douglas and conviction of Meyes on the murder charge?

We submit that no advantage exists and that the disposition of the murder case alone places no burden on one counsel representing both petitioners.

In petitioners' supplemental brief, the author contends that Meyes' prior felony convictions (including the murder), as opposed to Douglas' "clear" record, would present an undue burden on a single counsel representing petitioners jointly. The burden, according to said author, would be in deciding on whether each should take the witness stand. The author feels that since California allows comment on the failure to testify, that this adds particular complexity to the burden on a single counsel in deciding on who does and who does not take the stand. (Supp. Br. for Pet. p. 8.)

Before this contention is analyzed, let us assume that this Honorable Court accepts respondent's other arguments, *supra*, to the effect that no conflict exists in the actual trial evidence against or for the petitioners, and that the evidence with respect to the killing of the arresting officer *per se* presented no real conflict between the two petitioners from an evidentiary standpoint.

The issue thus becomes whether or not, *in the case at bar*, one counsel can effectively represent both petitioners when one of the petitioners (Meyes) has four prior felony convictions (1 burglary, 2 robbery, and 1 murder) against him [Tr. of R. pp. 7-8; *People v. Meyes, supra*, 198 Cal. App. 2d 484] and the second petitioner (Douglas) has no felony record. Otherwise stated, is there such a "conflict of interests" between petitioners as to their background records, that effective representation of both men by one counsel in a trial is precluded?

It is submitted that when one scrutinizes the instant case through the glasses of trial practicalities and tactics, not only can Douglas and Meyes be effectively repre-

sented by but a single counsel, they can be *more* effectively represented jointly by a single counsel than if each had separate counsel! Let us consider the following propositions:

1. If a defendant *does not* take the stand, California does permit comment upon his failure to testify.

Cal. Const. Art. I, §13.

2. If a defendant *does* take the stand, his testimony may be impeached by showing that he has been convicted of a felony or felonies prior to the time of his testimony.

Cal. Code Civ. Proc. §2051, *supra*.

3. In the instant case, Douglas would testify. He has no prior record on which he could be impeached, and he has been so well identified as a perpetrator of the crimes charged, that he has to take the stand and defend himself.

4. The fact that Douglas testifies will certainly not hurt Meyes. (Actually, in the prior murder trials, Douglas presented an alibi as to one of the instant crimes and flatly denied commission of the others. Meyes flatly denied commission of the instant crimes when he testified in the murder trials. See *People v. Meyes, supra*, 198 Cal. App. 2d 484, 490.)

5. Now it can be hypothesized that if Meyes does not testify in the instant trial, Douglas will be badly hurt for the following reasons: There is abundant prosecution evidence linking Douglas to Meyes as a joint perpetrator of the crimes. If

Meyes stays off the stand "his failure to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the court."

Calif. Const. Art. I, §13, *supra*.

Cal. Pen. Code, §1127.

Due to the linking of the two petitioners in the commission of the instant crimes by the many eyewitness victims, it is easy to see the damage which would accrue to Douglas when the trial judge proceeded to comment upon Meyes' failure to testify and explain all the eyewitnesses testimony against him. Douglas' denials on the witness stand would not neutralize this damage.

6. If Meyes did testify, it is true that his prior felony convictions could be brought out to impeach his credibility. (Cal. Code Civ. Proc. §2051, *supra*.) However, the jury is instructed, as it was in the instant case, that *"a witness may be asked if he has ever been convicted of a felony, and that can be asked only on one basis and that is for the possible impeachment of him as a witness, and that can be the only basis that it can be considered. It cannot be considered for any other purpose."*

[Emphasis added. Tr. of R. p. 65.]

In other words, the jury was told that they could not utilize Meyes' prior convictions to enforce the prosecution evidence of guilt against Meyes himself, let alone against Douglas. They could *only* use it to appraise the believability of Meyes' testimony.

Therefore, if Meyes takes the stand, Douglas is at least protected to the extent that the jury is instructed on the limitations which they must place on the evidence of Meyes' prior felony convictions. But if Meyes does not testify, Douglas is going to have to sit still while the trial court comments on Meyes' failure to testify and the effect this has on the evidence against Meyes (and impliedly, against Douglas).

It is thus an inescapable conclusion that Douglas will be far better off if Meyes takes the stand than he would be if Meyes does not take the stand.

7. As to Meyes' own position, it is submitted that with all of the eyewitness evidence against him on each of the counts charged, coupled with the power of the judge to comment if he fails to testify, his only chance to gain an acquittal on all or any part of the charges, is for him to testify on his own behalf, and let the trial court limit the effect of his prior convictions by the specific limiting instruction, *supra*.

8. We thus reach the conclusion that both petitioners are much better off if the one with the bad record (Meyes) testifies, than they are if he fails to testify.

It is obvious that the public defender in the instant case had reached this decision since he was educating the jury with respect to Meyes' past record on voir dire, with an eye to putting him on the stand. [Tr. of R. p. 65.]

Since the evidence in the instant case inextricably linked both petitioners, it is submitted that a

united front with both men testifying in spite of Meyes' prior record was the only possible defense tactic. With one attorney guiding their joint destinies, both petitioners were guaranteed that the best step for both of them was taken, *i.e.*, Meyes taking the stand, *supra*. If, however, a second counsel represented Meyes and placed undue emphasis on his past record alone, said counsel may have kept Meyes off of the stand, and both petitioners would suffer the burden of the trial court's comment on Meyes' failure to testify, *supra*. Also, a separate counsel for Meyes may easily ignore the tactical analysis set out above, simply because he is guiding only one petitioner's destiny.

Thus the public defender in the instant case was in a better position to render effective aid to petitioners in the instant case than a separate counsel for each petitioner would be, and the so-called burden of deciding which petitioner should take the stand is nonexistent. Both petitioners *must* take stand.

It should also be considered that if this court decides to find that two defendants have a "conflict of interests" merely because one has a prior record and the other does not, they open the door to a myriad of problems in deciding what type of conflict between two defendants necessitates separate counsel for each. How bad does the record have to be? Must the priors be related to the crime charged? What if instead of a prior conviction record one of the defendants is from a minority group and the other not? What if one defendant is a laborer and his codefendant a banker?

A conflict in the actual evidence against two defendants or a conflict in their defenses, is a tangible demonstrable legal problem. But a conflict predicated on one man's background compared to another's is a conflict of tenuous and uncertain bounds.

It is nonetheless submitted, that no "conflict of interests" in the prosecution evidence, defense, or the prior record of one of the petitioners exists in the instant case which calls for the appointment of separate counsel for each petitioner. No undue burden would be placed on a single counsel representing petitioners jointly. It is interesting to note that the author of the petitioners' supplemental brief contends that Douglas was stigmatized not only by Meyes' convictions, *supra*, but by Meyes' "belligerence and recalcitrance on the stand." (Supp. Br. for Pet. p. 8.) It is, however, submitted that a reading of this record shows that both petitioners gave variations on the same theme of delaying tactics throughout the proceedings. Further, to hold that the demeanor in court of one defendant conflicts with that of his codefendant certainly is not the type of conflict embraced by *Glasser v. United States*, *supra*. (315 U. S. 60.)

The author of petitioners' supplemental brief contends that "Petitioner Douglas' motion for a continuance to retain counsel was denied on the mere basis that the motions for a continuance were made piecemeal [R. 36], even though this motion stemmed from the denial of the previous one for the appointment of separate counsel." (Pet. Supp. Br. pp. 9-10.)

It is submitted that this contention is patently belied by the record. While the trial judge talked in terms of prior motions for continuance, he was in fact re

ferring to the long period of time that the matter had been before the courts, and the fact that for the first time at 10:10 a.m. on the first day of trial, Douglas suddenly comes up with a counsel, "Leo Brennan." [Tr. of R. p. 36.]

Recall again that the preliminary hearing was had in the instant case on August 3, 1959 and that on August 18, 1959, the public defender had been appointed to represent petitioners, *supra*. [Tr. of R. p. 9.] The petitioners were in court on August 21, 1959 to enter their pleas. [Tr. of R. p. 10.] The instant trial commenced on September 30, 1959. [Tr. of R. p. 11.] It is submitted that there was ample time for Douglas to procure a counsel, if he really had been in touch with one. The trial court did not abuse its discretion in denying this motion for continuance.

II.

The Petitioners Were Not Deprived of Due Process of Law When the California District Court of Appeal Refused to Appoint Them Counsel on Appeal After Said Court Made an Independent Investigation,

The argument with respect to appointment of counsel on appeal was covered in the original "Brief for Petitioner" at pages 13-21 and in "Respondent's Brief" at pages 29-46.

The author of the petitioner's supplemental brief has misstated completely a fact of great importance to the posture of the instant case on appeal:

"Petitioner Douglas' argument that he needed separate trial counsel in order to secure effective aid was not presented in petitioner Meyes' pro se

brief, which the appellate court stated was submitted for both of them. (R. 402.) Respondent noted the motion for separate counsel only to argue that it had not been made in good faith, basing this argument on the non-sequitur that Douglas stated at one point that 'he was prepared' for trial (Petr's Brief in this Court, p. 19, note).

"Because Douglas was unrepresented and no argument was held in the appellate court, an important California decision on the conflict of interest question was not formally brought to the court's attention, let alone argued to it (ibid)."

Supp. Br. for Pet. p. 13.

As stated at oral argument before this Honorable Court on April 17, 1962 and in Argument I, *supra*, certain of the records such as the preliminary hearing transcript, either murder trial transcript, the *in propria persona* briefs of Meyes and Douglas and the respondent's brief in the District Court of Appeal, might best be lodged before this Honorable Court.

In the *in propria persona* brief filed in the District Court of Appeal by Meyes, the matter of the denial of both petitioners' motions for continuance was discussed at length.

It is true that the matter of separate counsel for each petitioner was not raised in said brief, however, respondent again submits as represented under Argument I, *supra*, that in his respondent's brief in said court, he devoted eight full pages to a discussion of said point, which included a full discussion of the "conflict of interests" cases of *People v. Robinson*, 42 Cal. 2d 741, 269 P. 2d 6, and *People v. Lanigan*, 22 Cal. 2d

569, 140 P. 2d 24. The instant case was briefed in the court below before the case of *People v. Kerfoot*, *supra*, 184 Cal. App. 2d 622, 7 Cal. Rptr. 674, had been decided. (Pet. Br. pp. 9-10, note.)

However, at the time of the oral argument, respondent went before the District Court of Appeal and cited the *Kerfoot* case to said court, *supra*, Argument I.

So the lower appellate court did have the "conflict of interests" point before them, as well as "an important California decision on the conflict of interest." (Pet. Supp. Br. p. 13, *supra*.)

As was done in the original petitioners' brief, the supplemental petitioners' brief assumes that the absence of comment on certain points by the lower appellate court is complete and conclusive evidence that the matters did not come to their attention. (Pet. Supp. Br. p. 13.)

However, it is again submitted that the lower appellate justices, who did in fact have the point before them, concluded that no real "conflict of interests" existed and disposed of the point without comment. (Resp. Br. pp. 44-45.)

At the risk of repetition, jurists disagree sharply on the validity of legal arguments. A proposition that one jurist may dispose of without comment may elicit a five-page dissertation by a dissenting jurist on the same court and vice-versa. (Resp. Br. pp. 45-46.)

Respondent will not here repeat the procedure followed by the California Appellate Courts in deciding whether an indigent appellant needs counsel or not. This is amply covered by the Respondent's Brief at pages 33-41.

In *Griffin v. Illinois*, 351 U. S. 12, 100 L. Ed. 891, 76 S. Ct. 585, this court stated (100 L. Ed. 891 at p. 899) in discussing the right of an indigent to a transcript:

" . . . We do not hold, however, that Illinois must purchase a stenographer's transcript in every case where a defendant cannot buy it. *The Supreme Court may find other means of affording adequate and effective appellate review to indigent defendants.* . . . (Emphasis added; Resp. Br. p. 44.)

It is submitted that an indigent appellant in California is provided with a full and complete record in every case that goes up on appeal. This record goes before the appellate court. They review that complete record and decide if counsel would benefit either the appellant or the court. If they decide that the appeal presents no complex problems, *after reviewing the record*, they do not appoint counsel, but nonetheless do go on and consider the case and render a written opinion.

It is submitted that said practice affords "adequate and effective appellate review to indigent defendants . . ." in accordance with the spirit of *Griffin v. Illinois, supra*, in spite of no automatic appointment of counsel in every case.

It is sincerely submitted that an independent review of the trial record by one or more experienced California appellate justices who "are conscientious to a fault" (Br. for Pet. p. 20) is a more effective review than one had by a private practicing counsel who, more often than not, is irritated with his court appointment. It could well be that a court-appointed counsel will give a

hasty review pursuant to a court appointment, and then report back to court that he found no meritorious points. The appellate court may well accept the word of this "advocate" and affirm a conviction without the presently utilized "independent" investigation which petitioners here contend is an inadequate review. A sound legal point may thus go unnoticed.

The author of petitioners' supplemental brief, in referring to the asserted denial of due process at the appellate level (Supp. Br. for Pet. p. 16), and asserting that to permit the presiding judge to have the sole say as to the correctness of his conduct and rulings would be basically unfair, is apparently referring to proceedings in which the criminal defendant is met at the threshold of the appellate process by a requirement that he obtain a finding of the trial court that his appeal has merit in order to be able to appeal or to obtain the means (i.e., a transcript) of having an effective appellate review of his trial proceedings.

California affords the indigent defendant equal access to the appellate courts and the means of obtaining effective appellate review of the trial proceedings. The procedure followed in California does not deny an indigent defendant due process.

We recognize that, although a state may withhold completely the right to appeal, once it has made generally available such review it cannot withhold from indigent appellants this right which is made available to those able to pay the expenses attendant the exercise of this right. However, where petitioners were afforded a complete review by the appellate court on the appeal they have not been denied anything because of their indigency.

Conclusion.

It is submitted that there was no denial of counsel to these petitioners at the trial as they were afforded competent counsel in accord with California statutory requirements and they dismissed that counsel asserting that he was unprepared and making themselves the sole judges of his preparedness and competency. Their claims in this regard are not supported by the record.

The asserted conflict now made was a mere suggestion of which they now also wish to be the sole judges.

It is submitted that California may properly require a conflict to be established as a demonstrable reality in order to allow one claiming a conflict to prevail.

Further, it is submitted these petitioners were afforded a thorough and adequate appellate review of the proceedings in the trial court and they may not be heard to assert that they were denied any rights of review because of their poverty. Accordingly, the judgment of the court below should be affirmed.

Respectfully submitted,

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Office Supreme Court, U.S.
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IN THE
Supreme Court of the United States

October Term, 1962

No. 34

WILLIAM DOUGLAS and BENNIE WILL MEYES,
Petitioners,

v.s.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

On Writ of Certiorari to the Supreme Court of the
State of California.

PETITION FOR REHEARING.

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IN THE
Supreme Court of the United States

October Term, 1962

No. 34

WILLIAM DOUGLAS and BENNIE WILL MEYES,
Petitioners.

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

On Writ of Certiorari to the Supreme Court of the
State of California.

PETITION FOR REHEARING.

Respondent respectfully petitions this Honorable
Court for a rehearing in the above entitled matter.

GROUND FOR REHEARING.

I.

**The Majority Opinion Is Conceptually Mistaken as
to the True Scope of Review Afforded by the
California Appellate Courts to Indigents Even
Though Said Courts Decide Not to Appoint
Counsel on Appeal.**

It would serve no useful function here for the re-
spondent to counterpoint the majority opinion of this
Honorable Court with thoughts already expressed so
cogently in the two dissenting opinions.

There is, however, one area where the majority opinion appears to be conceptually mistaken and neither dissenting opinion directly mentions this area. Respondent has particular reference to the scope of review afforded an indigent appellant by a California appellate court, where said court has examined the indigent's case in accord with *People v. Hyde*, 51 Cal. 2d 132, 331 P. 2d 42, and decided that appointment of counsel "would be of no value to either the defendant or the court."

The majority opinion of this Honorable Court states:

"In spite of California's forward treatment of indigents, *under its present practice the type of an appeal a person is afforded in the District Court of Appeal hinges upon whether or not he can pay for the assistance of counsel. If he can the appellate court passes on the merits of his case only after having the full benefit of written briefs and oral argument by counsel. If he cannot the appellate court is forced to prejudge the merits before it can even determine whether counsel should be provided.* At this stage in the proceedings only the barren record speaks for the indigent, and, unless the printed pages show that an injustice has been committed, he is forced to go without a champion on appeal. Any real chance he may have had of showing that his appeal has hidden merit is deprived him when the court decides on an ex parte examination of the record that the assistance of counsel is not required." (Emphasis added.)

Douglas v. California, 31 Law Week 4281.

This language does great injustice to the actual review afforded an indigent without counsel in California's Appellate Courts. Said language indicates that the majority of this Honorable Court have concluded that the appellate justices prejudge the merits of a given case at the time they are examining the record to determine if counsel should be appointed. This Honorable Court concludes that if, in fact, the appellate court determines not to appoint counsel, then that indigent's case is not accorded the same caliber of review received by an appellant of means. These conclusions are patently unsupported by fact, as an examination of some recent California cases will reveal.

In the case of *People v. Rudolph*, 197 Cal. App. 2d 739, 17 Cal. Rptr. 603, the California District Court of Appeal refused to appoint counsel, and appellant never filed a brief of any sort. However, not only did the appellate court refrain from a routine affirmance in an aura of prejudgment from the denial of counsel, they, in fact, closely analyzed the case on appeal and reversed the lower court's conviction of appellant on a serious count of robbery. Said opinion is attached to this petition as Exhibit "A" and dramatically demonstrates the appellate court's avoidance of a *pro forma* review of an appeal by an indigent where said court has decided counsel would be of no help to the court or defendant.

In the case of *People v. Bryson*, 172 Cal. App. 2d 536, 342 P. 2d 274, the California District Court of Appeal referred a case to an attorney member of the Committee on Criminal Appeals of the Los Angeles Bar Association. Said attorney reported to the court

"that no meritorious ground of appeal had been found."

The appellate court thereafter refused to appoint counsel, after examining the record, and appellant never filed a brief. However, the appellate court went on to *reverse* the judgment because the prosecution had not adequately proved appellant's prior convictions.

* Again, in the case of *People v. Parra*, 193 Cal. App. 2d 93, 13 Cal. Rptr. 828, the California District Court of Appeal reversed a conviction of appellant after refusing to appoint a counsel for him.

In the case of *People v. Mulvey*, 196 Cal. App. 2d 714, 16 Cal. Rptr. 821, the California District Court of Appeal *appointed a counsel* for the indigent appellant and said counsel furnished the court "with a comprehensive report and analysis of the evidence and other trial proceedings, including the instructions, *which concludes with the statement that in his opinion there is no basis for the appeal.*" (Emphasis added; 196 Cal. App. 2d 714, 716-717.) Appellant later filed his own brief, the judgment was affirmed and then *on their own motion*, the court granted a rehearing, reanalyzed the case, and reversed the conviction in its entirety.

In the case of *People v. Hamm*, 145 Cal. App. 2d 242, 302 P. 2d 345, the California District Court of Appeal again referred the case to an attorney member of the Los Angeles Bar Association Committee on Criminal Appeals. Said attorney found that "no meritorious ground for appeal existed and that the filing

of a brief would be unjustified." (145 Cal. App. 2d 242, 244.) The indigent appellant filed no brief, but the court, after an "independent study of the record" reversed the lower court's adjudication that defendant had suffered a prior conviction. The evidence was found lacking—in this respect by our appellate court, although said error was overlooked by an experienced attorney. [See Ex. "B".]

Thus, it is submitted that in California, the appellate courts judiciously protect the rights of an indigent appellant, and yet the procedure laid down in *People v. Hyde, supra*, 51 Cal. 2d 152, 331 P. 2d 42, also affords the court an opportunity to avoid unnecessary expenditures in time and funds on frivolous appeals. (Respondent has been informed by the Clerk of the Second District Court of Appeal, the busiest Appellate District in the state of California, handling approximately 700 criminal appeals a year, that over 50% of all criminal appeals are by indigents.)

The above cases clearly demonstrate that the California reviewing courts do not prejudice a particular case at the time they decide on the feasibility of appointing counsel. These cases show that even where a case has been referred to an experienced attorney, and he has missed an obvious point of merit, the California appellate courts have found said error and corrected it.

It cannot be said that in California, an indigent appellant will get a less thorough and comprehensive re-

view than an appellant of means. In the case of the appellant with a retained counsel, a reviewing court may justifiably rely on the work of private counsel. The court may telescopically review the record with their judicial eyes trained only on the points urged by this hired counsel. Due to the press of constant appellate litigation and such reliance on the diligence of the hired counsel, the appellate court may overlook points of merit not raised by that counsel. However, when faced with the case of the indigent appellant, the reviewing court will search the complete trial record (which California has prepared for that indigent at no expense to him) thoroughly and carefully with the knowledge that they are dealing with an appellant bereft of money and counsel. This reviewing court will be using the eyes of an experienced appellate justice who has honed his judicial vision on thousands of transcripts of all types and sizes.

These justices will not be reviewing these records, as is often the case in court-appointed counsel, through the untrained eyes of the young, enthusiastic advocate whose lack of appellate experience leads him to eloquent efforts in a wholly frivolous case while he innocently informs the court of the total absence of merit in a case fraught with error. Nor will these justices be examining these records with the impatience of the busy practitioner who, irritated with his court appointment, skims over a record disclosing a coerced confession while his mind plays with the complexities of a coming will contest.

These justices will be reviewing these records through experienced eyes (*People v. Vigil*, 189 Cal. App. 2d 478, 480-482, 11 Cal. Rptr. 319), and with legal minds which have embraced a dimension of legal understanding that can only repose in the attorney who has ascended the appellate bench.

This Honorable Court places reliance on the cases of *Johnson v. United States*, 352 U. S. 565, 77 S. Ct. 550, 1 L. Ed. 2d 593, and *Ellis v. United States*, 350 U. S. 674, 78 S. Ct. 974, 2 L. Ed. 2d 1000. (*Douglas v. California*, 31 L. Week 4281, 4282.) Respondent respectfully submits that those cases deal with the application by an indigent for leave to appeal *in forma pauperis* in attacking the certification of the Federal trial court that the desired appeal is not being pursued in good faith. *Johnson v. United States*, *supra*, held at page 551 (77 S. Ct. 550) that such an application "does not require that in every such case the United States must furnish the defendant with a stenographic transcript of the trial."

Indeed, the California Appellate courts do not throw up such barriers for an indigent to overcome in order to secure a hearing on an appeal's merits. The justices on California's District Courts of Appeal are supplied with a complete record at no expense to the indigent and from this record, they review the lower court proceedings as to their actual merits, and not merely to determine whether or not the appeal is being pursued in good faith.

II.

**The Majority Opinion Fails to Pass on the Issue of
Petitioner's Right to Separate Counsel at the
Trial and Likewise Omits to Spell Out Neces-
sary Limits in Requiring Appointment of Coun-
sel on All Appeals for Indigents.**

There is a footnote observation in Justice Harlan's dissenting opinion to the effect that no improprieties occurred with respect to the representation of the two petitioners at trial.

Douglas v. California, supra, 31 Law Week
4281, 4284.

However, the majority opinion is completely silent on this issue, although the majority of petitioner's and respondent's oral arguments at both the original argument and subsequent reargument of the instant case were, in fact, devoted to this issue.

In failing to make a finding on this issue, this Honorable Court may be asked to hear said trial counsel issue in the very near future due to the fact that said issue has been litigated already in the California District Court of Appeal and a hearing has been denied by the California Supreme Court.

People v. Douglas, supra, 187 Cal. App. 2d 802,
813, 10 Cal. Rptr. 188.

Pursuant to this Honorable Court's opinion, the District Court of Appeal must appoint counsel for both petitioners on appeal, but said counsel will find that the only possible points to bring to the attention of

the appointing court have already been passed on by that court in its initial decision. Therefore, should this Honorable Court reject respondent's Argument under "Ground I," *supra*, it is submitted that they should nonetheless reconsider the feasibility of making a final determination of the issue with respect to petitioners' representation at the trial level of the instant case.

Lastly, the majority opinion of this Honorable Court sets out no minimal standard with respect to the appointment of counsel on appeal. Respondent has particular reference to a situation where the appellate court appoints counsel, and said counsel reports back that there is absolutely no basis for appeal. *People v. Mulvey, supra*, 196 Cal. App. 2d 714, 716-717. Must the appellate court insist that said counsel file a brief? Must they appoint another counsel? How much reliance can the appellate court place on an appointed counsel? Had the appellate court not re-examined the *Mulvey* case, *supra*, on its own motion after appointed counsel indicated the case was free of error, a substantial error would never have been corrected.

It is again respectfully submitted that if this Honorable Court rejects respondent's argument in "Ground I," *supra* it nonetheless should reconsider its decision from the standpoint of spelling out some guidelines upon which a state appellate court can rely in appointing counsel for the indigent appellant.

Conclusion.

It is respectfully requested that this Honorable Court reconsider the observations in the dissenting opinions in the instant case, and that they examine the cases set out above which demonstrate that the California appellate courts do not prejudge cases at the time of deciding whether or not to appoint counsel; that an indigent appellant does not suffer on appeal because of that indigency; and that "any real chance he may have had of showing that his appeal has hidden merit" is not deprived an indigent merely because he is not represented by counsel. It is respectfully urged that this Honorable Court grant a rehearing in this matter in order that California's procedure for handling indigent appeals can be further considered in its true light. It is also respectfully requested that if this Honorable Court feels that their original decision on this point should stand, they nonetheless grant a rehearing for purposes of considering the issues of the trial representation of the petitioners and the matter of spelling out some basic guidelines for the appointment of counsel on appeal.

Respectfully submitted,

STANLEY MOSK,

Attorney General.

WILLIAM E. JAMES,

Assistant Attorney General.

JACK E. GOERTZEN,

Deputy Attorney General.

Attorneys for Respondent.

EXHIBIT "A".

Opinion of the District Court of Appeal.

[Crim. No. 78959 Second Dist., Div. Three, Dec. 7, 1961]

The People, Plaintiff and Respondent, v. James Monroe Rudolph, Defendant and Appellant.

Appeal from a judgment of the Superior Court of Los Angeles County and from an order denying a new trial. Edward R. Brand, Judge. Affirmed in part and reversed in part.

Prosecution for assault with a deadly weapon and for armed robbery. Judgment of conviction affirmed as to assault count and reversed as to robbery count.

James Monroe Rudolph, in pro per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

The Court.—By one information James Monroe Rudolph was accused of assault with intent to commit murder, a second offense of burglary and a third offense of robbery, consisting of taking from the immediate presence of George C. Peterzon and James Stokes certain keys, by means of force and fear. By separate information, he was accused of grand theft. In each information he was accused of having served terms in prison after conviction of robbery, false imprisonment and kidnaping for the purpose of robbery and for a separate offense of robbery. The two informations were consolidated for trial. Defendant pleaded not guilty and admitted having served a term in prison for robbery, false imprisonment and kidnaping for the purpose of robbery and a separate term

after conviction of robbery. In a jury trial defendant was represented by the public defender. By separate verdicts defendant was found guilty of assault with a deadly weapon, burglary and robbery and it was found that at the time of the burglary and at the time of the robbery defendant was armed. He made a motion for new trial, which was granted with respect to the conviction of burglary and denied as to the convictions of assault with a deadly weapon and robbery. The count charging burglary was dismissed. In propria persona, defendant appealed from the judgment and the order denying his motion for a new trial. He applied for appointment of counsel on the appeal; we denied the application after reading the record and determining that the appeal is groundless as to one conviction and clearly meritorious as to the other, as will hereinafter appear. Defendant was given notice, and time to file a brief and has filed none.

We have examined the instructions that were given and those that were refused and find that the jury was correctly and adequately instructed. In reply to our inquiry of the deputy public defender who represented defendant, we have been advised that there were no improper statements made by the district attorney in arguments to the jury.

There was evidence of the following facts. On December 5, 1960, the Scandia Restaurant at 9040 Sunset Boulevard in Los Angeles, was closed for business. At about 2:15 p.m., George C. Peterzon, executive chef, entered the restaurant through a cellar door and admitted another employee, James Stokes, a pot washer. They went into Peterzon's office. Both Peterzon and

Stokes testified that they observed a man coming down the stairway toward the office. The man was wearing a hat and his face was partly covered by a handkerchief. When he was about 10 feet away from them he pointed a gun at them. Peterzon stopped back into the office and closed the door. Stokes testified that the man told Peterzon to open the door or he would shoot him (Stokes); Peterzon opened the door and Stokes stepped inside; Peterzon asked, "What do you want?" and the man said "Stay still or I will shoot," whereupon he fired a shot. He ordered them to lie on the floor and they both lay face down. The man asked where the safe was and was told there was no safe in the office; he asked where the money was, saying, "There got to be some money around here"; he was told that the money was banked every night. The man looked around, pulled cabinets open, and pulled loose the telephone wires; he found some keys which he handled. He disappeared up the stairs, but returned soon and looked around some more, after which he left and did not return. After waiting some time, Peterzon and Stokes got off the floor. Peterzon then observed for the first time blood on his clothing and discovered that he had been shot in the leg. Peterzon got into his car and drove to the sheriff's office.

Harold Vincent Hall, a police officer, testified that at about 1:50 a.m. on the morning of December 10, he and his partner were alerted by a silent burglary alarm coming from 3359 Wilshire Boulevard. They went to the location; Hall's partner remained at the front of the establishment; Hall went to the rear driveway; Hall heard two shots and running around the corner saw his partner had just fired two shots at a man

running across the street and between two houses; pursuing him he overtook him in a nearby garage where he was found hiding against the wall; he was arrested; a flashlight and a screwdriver were taken from him. The suspect wrestled his right arm free as the officers were placing on handcuffs, grabbed his gun and fired a shot, which went through his foot. A revolver was taken from him. The gun was produced at the trial and was admitted by defendant to be one that he had purchased from an ex-convict in Sacramento for \$20 or \$25.

Robert E. Carroll, a deputy sheriff, testified that a bullet that was shown him in court had been retrieved from the floor in the lower kitchen of the Scandia Restaurant about 3:30 p.m. on December 5. It was photographed while held in his hand, was taken to the station and placed in the evidence locker.

Howard F. Gavin, an expert in forensic ballistics, testified that he fired seven shots from the gun that had been taken from defendant. Three of the bullets were compared with the bullet that had been retrieved by Deputy Carroll. They had all been fired from the same gun. Under examination and cross-examination he demonstrated that the identity of the bullets was proven by the striation pattern which fell into line and was similar in all respects. There was no other expert evidence on this subject.

Defendant testified that when he bought the gun, in September, it contained six loads, one of which was fired accidentally during his arrest. He denied having ever been in the Scandia Restaurant and any knowledge of any offense committed there.

Both Peterzon and Stokes were shown photographs of arrestees and later looked at several of them in a police line-up. Peterzon could not identify the defendant; Stokes testified that he did pick out the defendant as the one whom he encountered in the restaurant. Defendant testified that at that time while he could not see Stokes he heard him say "I have never seen any of those men before." In his cross-examination defendant admitted three former felony convictions.

At the time of defendant's motion for a new trial and a hearing on an application for probation it was stated by defendant's attorney that defendant was presently serving a sentence of life imprisonment for a violation of section 209, Penal Code. Defendant was sentenced on his convictions of assault with a deadly weapon and robbery, the latter offense consisting of the alleged taking of keys from Peterzon and Stokes and from their immediate presence.

In the line-up at the jail Peterzon was unable to identify the defendant. The testimony of Stokes as to his identification was unconvincing. He apparently had no opportunity to observe the features of defendant during the commission of the offense. However, the expert testimony left no doubt as to the identity of defendant as the one who committed the assault.

Mr. Gavin was shown by study and experience to be well qualified as an expert in forensic ballistics. He had testified as such in cases running into the hundreds. He testified as follows: "When the rifling grooves are cut into a weapon, the tooling of this rifling causes minute lines or striac, which is unique to that particular weapon which is being worked on, because

the tool itself receives wear, and there is differences in the metal in which the rifling is being cut, and this makes the pattern for that particular barrel to be unique and like no other barrel." In his experience he had never found two guns with the same striation patterns. The bullets which he had compared were received in evidence. He was subjected to vigorous cross-examination. The conclusions he expressed were convincing evidence that the bullet which struck Peterzon was fired from defendant's gun, which he stated had never been in the possession of any one else while he owned it. His guilt of assault with a deadly weapon was proved by the strongest sort of evidence.

We are of the opinion, however, that there was insufficient evidence to prove that defendant was guilty of robbery in taking keys from the immediate presence of Peterzon and Stokes as alleged in the information.

Peterzon testified as follows: "Q. After the man came in the second time, what did he do after he was in there for awhile? I believe you stated he took some keys? A. The first time he took the keys to go upstairs to get in—I understand he had been up—Mr. Crigger: (interrupting) I move to strike what he planned to do. The Court: Strike it out. Q. By Mr. Bain: Did you see him take the keys? A. I heard him take the keys. Q. Did you see where they were later on? A. No. Q. Later on, did you look at the spot where the keys had been? Did you notice later that some keys were missing? A. I don't know if they were missing. I heard him have them in his hand, about three or four of them." On cross-examination, he testified: "Q. Did you actually see, with your

eyes, any keys being taken by that man? A. No, but the keys are hanging on a rack, and you can hear it.

Q. In other words, you didn't see any keys being taken, but you heard a noise which to you sounded like keys rattling, is that right? A. Yes, sir.

Q. How many keys do they have on the place where the keys were taken from? A. Approximately 30-40.

Q. And you did not find any keys missing sometime later? A. I didn't look for it.

Q. You don't know, do you, whether the man, when he came in, had any keys with him in his possession, when he came to the stairway? A. No. All he had was a handkerchief

in one hand and a gun in the other.

Q. After this happened, you didn't check the keyboard, or whatever it was, to see whether there were any missing?

A. No, I went right down to the Sheriff's station.

Q. And the keys which you heard rattling, or the noise that sounded to you like keys, did that happen right after you went into the office and laid down?

A. No, it was after he looked around, and I suppose he saw the keys hanging on the rack, and he started fooling around with them to find something.

Q. When he left the office—did you check the keys?

A. No, I couldn't check the keys. He took the keys and went out of the office and came back in again."

Stokes testified: "Q. Before he left the first time, did he take something with him? A. Yes, he took some keys.

Q. Did you see him take the keys?

A. No, I know they were rattling—

Q. What?

A. The keys were rattling.

Q. After you laid down on your stomach in the office, did you look

at him at any time then while you were lying there?

A. No, I didn't.

Q. Did you ever see that man take

any keys from that office? A. All I heard was the rattling from the keys. Q. Just the rattling noise that indicated to you some keys were being moved by somebody? A. Yes."

Whatever Peterzon and Stokes heard which they identified as the rattling of keys was while they were lying face down on the floor. At no time did they see defendant or observe his movements. While they assumed that he left the room carrying some of the keys, that was merely a conclusion from the fact that they heard what they believed to be the rattling of the keys. They merely supposed that he took the keys with him when he left the room. There was no evidence that any doors had been opened by the use of keys nor was there any evidence that any keys were missing. It was unlikely that if defendant took any keys from the board he would have returned them. However strong the suspicion may be that defendant carried away keys from the immediate presence of Peterzon and Stokes, the facts in evidence fall short of proof that he was guilty of robbery.

The judgment and motion for new trial with respect to the conviction of assault with a deadly weapon are affirmed; as to count III of the information charging robbery, the judgment and order are reversed.

EXHIBIT "B".

Opinion of the District Court of Appeal.

[Crim. No. 5692. Second Dist., Div. Three. Oct. 22, 1956.]

The People, Respondent, v. Robert Donald Hamm, Appellant.

Appeal from a judgment of the Superior Court of Los Angeles County and from an order denying a new trial. LeRoy Dawson, Judge. Reversed with directions.

Prosecution for illegal possession of heroin. Judgment of conviction reversed with directions.

Robert Donald Hamm, in pro. per., for Appellant.

No appearance for Respondent.

Shinn, P. J.—Robert Donald Hamm was charged with the willful, unlawful and felonious possession of a preparation of heroin (Health & Saf. Code, § 11500), and with a prior felony conviction, to wit, attempted robbery. Defendant denied the former conviction. Trial was to the court and the evidence consisted of that received at the preliminary hearing and additional evidence introduced at the trial. Defendant was represented by counsel. The court found defendant guilty and also found the charge of prior conviction to be true. He appeals from the judgment and an order denying him a new trial.

There was evidence of the following facts: At about 7:30 p.m. on March 1, 1956, plain-clothes officers White and Northrup were driving northward in an unmarked car on Towne Avenue in the city of Los An-

geles. Officer White testified that it was dark and that the only artificial lighting came from the car headlights. He observed defendant and one Rollins walking southward on Towne. Defendant was nearest the curb. His attention was directed to the men by defendant's apparent nervousness. As the car approached, White saw defendant make a backhand flipping motion with his right hand and noticed a light object leave his hand. Rollins did not make a throwing motion. White got out of the car and discovered a cellophane bundle lying on the parking strip in the dirt next to the curb. The bundle was beside a parked car about three feet from where defendant was standing when he threw it. Both men's arms were examined; old needle marks were found on Rollins' arms; none was found on defendant. Officer White placed the bundle in an envelope, sealed it and sent it to the central property police officer where it was examined the next day by Jay Allen, a police chemist. Allen testified that he opened the envelope and found it to contain seven paper bindles, each one holding a quantity of powder. He analyzed the powder and determined it to be heroin.

Defendant, testifying in his own behalf, stated that while he and Rollins were walking southward on Towne Avenue, they were stopped by two plain-clothes policemen. The officers asked him if he was a narcotics user. He told them he had been but had quit it. The officers then examined both men for needle marks. They found none on defendant, but one of the officers accused defendant of being under the influence of narcotics. The officers were about to let them go when one suggested that defendant and Rollins might have

dropped something. The officer searched the area with a flashlight and discovered a small package by the curb. Defendant denied that either he or Rollins had thrown the package away. On cross-examination, he admitted the prior conviction, but it was conceded that he had not served a term in prison.

Lovell Rollins, testifying on behalf of defendant, admitted being a narcotics user, but stated that defendant did not have the heroin in his possession.

Upon application of defendant for appointment of counsel, this court referred the matter to the Los Angeles Bar Association Committee on Criminal Appeals. The record on appeal was examined by a member of the committee and a report was made to the court that in the attorney's opinion no meritorious ground for appeal existed and that the filing of a brief would be unjustified. Defendant was duly so advised and his time to file a brief was substantially extended. No brief has been filed. In accordance with our practice, we have made an independent study of the record. (See *People v. Logan*, 137 Cal.App.2d 331 [290 P.2d 11].)

The evidence supports the judgment. There was testimony justifying a reasonable inference that Hammi had actual dominion and control over the heroin, and his knowledge that the package was contraband, was sufficiently shown by his attempt to dispose of it when he feared apprehension. (*People v. Tennyson*, 127 Cal. App.2d 243 [273 P.2d 593] and cases cited.)

The People produced no evidence of defendant's former conviction. He was questioned on cross-examination as follows: "Q. Have you ever been convicted

of a felony, sir? A. Yes, sir, I have. Q. What felony? A. Robbery. Q. Really it was attempted robbery, wasn't it? A. Yes, sir. Q. Rather than robbery? A. Yes. Q. You never served a term in the Federal or State prison for it? A. No, sir." This admission of a former conviction was relevant only to the matter of defendant's credibility and was available to the People for the purpose of impeachment only. (*People v. Carrow*, 207 Cal. 366, 368-369 [278 P. 857]; *People v. Batwin*, 120 Cal.App.2d 825, 828 [262 P.2d 88].) The adjudication that defendant had suffered a prior conviction was without support in the evidence.

The judgment and order are reversed and the cause remanded to the trial court with direction to that court that if, within 20 days after the filing therein of the remittitur from this court, the district attorney shall apply for an order dismissing that portion of the information which charges defendant with having been convicted of a felony prior to the commission of the offense under section 11500 of the Health and Safety Code charged therein, and said application be granted, and the court shall pronounce judgment and sentence upon defendant, thereupon such judgment shall stand affirmed. If the district attorney shall not within said period of 20 days make said application, the trial court shall grant appellant a new trial as to the accusation of the former conviction only.

Wood (Parker), J., and Vallée, J., concurred.

On October 23, 1956, the opinion and judgment were modified to read as printed above.